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

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC54

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Liquidity and Funding; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration adopted a final rule that amends its liquidity regulation to strengthen liquidity risk management at Farm Credit System (System) banks, improve the quality of assets in their liquidity reserves, and bolster the ability of System banks to fund their obligation and continue operations during times of economic, financial or market adversity. In accordance with the law, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 615 published on April 18, 2013 (78 FR 23438) is effective June 12, 2013.

FOR FURTHER INFORMATION CONTACT:
David Lewandrowski, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4056;
or
Richard Katz, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration adopted a final rule that amends its liquidity regulation to strengthen liquidity risk management at Farm Credit System (System) banks, improve the quality of assets in their liquidity reserves, and bolster the ability of System banks to fund their obligation and continue operations during times of economic, financial or market adversity. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 12, 2013.

(12 U.S.C. 2252(a)(9) and (10))

Dated: June 14, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–14739 Filed 6–19–13; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1209

RIN 2590–AA57

Rules of Practice and Procedure: Enterprise and Federal Home Loan Bank Housing Goals Related Enforcement Amendment

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is amending its Rules of Practice and Procedure (RPP) to specify that the rules of practice and procedure for hearings on the record in Subpart C therein shall apply to any cease and desist or civil money penalty proceedings brought against the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or the Federal Home Loan Banks (Banks) for failure to submit or follow a housing plan or failure of an Enterprise to submit information on its housing activities. An exception is provided where such rules are inconsistent with related statutory provisions, in which case the statutory provisions shall apply.

DATES: This final rule is effective on July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Lyn Abrams, Assistant General Counsel, (202) 649–3059; or Sharon Like, Managing Associate General Counsel, (202) 649–3057 (these are not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

1. Enterprise Enforcement for Housing Plan and Failure To Submit Housing Activities Information

Prior to the enactment of the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) provided the Secretary of the U.S. Department of Housing and Urban Development (HUD) with specific authority to establish, monitor, and enforce housing goals for mortgages purchased by Fannie Mae and Freddie Mac (collectively, the Enterprises). In addition, section 309(m) and (n) of the Federal National Mortgage Association Charter Act and section 307(e) and (f) of the Federal Home Loan Mortgage Corporation Act (collectively, Charter Acts) required that each Enterprise submit information on its housing activities to the Secretary of HUD, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing and Urban Affairs of the Senate.[1] *See* 12 U.S.C. 1723a(m) and (n); 12 U.S.C. 1456(e) and (f).

The Safety and Soundness Act, prior to the HERA amendments, authorized HUD to initiate cease and desist proceedings and impose civil money penalties against an Enterprise for failure to submit or comply with a housing plan or failure to submit information on its housing activities. HUD issued regulations implementing its enforcement authority against the Enterprises for these violations. *See* 24 CFR part 81, Subpart G.

HERA amended the Safety and Soundness Act in 2008 to create FHFA

[1] The Charter Acts require that the Enterprises submit information on their housing activities to the Committee on Banking, Finance and Urban Affairs of the House of Representatives. The Enterprises submit this information to that Committee's successor, the Committee on Financial Services of the House of Representatives.

as an independent agency of the federal government and, among other things, transferred the responsibility to establish, monitor and enforce the housing goals for the Enterprises from HUD to FHFA, and required that each Enterprise submit information on its housing activities to the Director of FHFA instead of to the Secretary of HUD. *See* Public Law 110–289, 122 Stat. 2654 (2008), codified at 12 U.S.C. 4501 *et seq.* The Safety and Soundness Act, as amended, requires the Director of FHFA to establish new annual housing goals for mortgages purchased by the Enterprises, effective for 2010 and beyond. FHFA reviews mortgage purchase data provided by each Enterprise in its Annual Housing Activities Report and other mortgage reports, as well as other available data, and determines whether the Enterprise has met the housing goals.

Enterprise compliance with the housing goals is enforced under section 1336 of the Safety and Soundness Act, which provides that if an Enterprise fails to meet a housing goal determined by the Director to be feasible, the Director may, in his or her discretion, require the Enterprise to submit a housing plan describing the specific actions the Enterprise will take to achieve the goal. *See* 12 U.S.C. 4566.

Section 1336 further provides that if an Enterprise fails to submit an acceptable housing plan or fails to comply with the plan, the Director may initiate cease and desist proceedings or impose civil money penalties against the Enterprise in accordance with sections 1341 and 1345, respectively, of the Safety and Soundness Act, exercise other appropriate enforcement authority, or seek other appropriate actions. *See* 12 U.S.C. 4566(c)(1) and (c)(7), 4581, 4585. In addition, sections 1341 and 1345 provide that the Director may initiate cease and desist proceedings or impose civil money penalties, respectively, if an Enterprise fails to submit information on its housing activities. *Id.* Sections 1341 to 1348 of the Safety and Soundness Act set forth the grounds and procedures for the enforcement actions. FHFA's RPP does not currently address enforcement proceedings for these violations. *See* 12 CFR part 1209.

2. Bank Housing Plan Enforcement

Section 10C(a) of the Federal Home Loan Bank Act (Bank Act), as amended by HERA (12 U.S.C. 1430c(a)), requires the Director of FHFA to establish housing goals with respect to the purchase of mortgages, if any, by the Banks. Section 10C(a) further states that the goals shall be consistent with the goals established for the Enterprises under sections 1331 through 1334 of the Safety and Soundness Act, taking into consideration the unique mission and ownership structure of the Banks. Section 10C(d) provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as they apply to the Enterprises. Thus, in accordance with section 1336, if a Bank fails to submit or follow an acceptable housing plan, the Director may initiate cease and desist proceedings or impose civil money penalties against the Bank.

FHFA's Bank housing goals regulation, which implements the statutory housing goals requirements, includes housing plan provisions similar to those in FHFA's Enterprise housing goals regulation, but like the Enterprise housing goals regulation, does not specifically address enforcement actions for failure to submit or follow a housing plan. *See* 12 CFR part 1281.

B. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. The Enterprises remain under conservatorship at this time.

II. Proposed Rulemaking

To provide clarity on the rules of practice and procedure that would apply should FHFA initiate enforcement actions under sections 1341 to 1348 of the Safety and Soundness Act, FHFA published a proposed amendment to § 1209.1(c) of the RPP in the **Federal Register**. *See* 77 FR 72247 (Dec. 5, 2012). The proposed amendment provided that the rules of practice and procedure for hearings on the record in subpart C therein would apply to any cease and desist or civil money penalty proceedings brought against Fannie Mae, Freddie Mac, or the Banks for failure to submit or follow a housing plan or failure of an Enterprise to submit information on its housing activities, except where such rules are inconsistent with related statutory provisions, in which case the statutory provisions would apply. FHFA noted that the hearing procedures in the Safety and Soundness Act for adjudicating these actions are almost indistinguishable from the statutory procedures for adjudicating other enforcement actions against the Enterprises, the Banks and their entity-affiliated parties under sections 1371 to 1379D. *See* 12 U.S.C. 4631–4641. Thus, the formal hearing procedures set forth in Subpart C of the RPP are well suited to govern enforcement proceedings under sections 1341 to 1348. FHFA also noted that amending § 1209.1(c) of the RPP would be a simpler and more efficient approach than making conforming amendments to each of the affected sections of the RPP.

FHFA received two comments on the proposed amendment. The commenters were an individual and the Mortgage Partnership Finance Program's Governance Committee of the Banks. Neither comment was applicable to the proposed amendment.

III. Final Rule

For the reasons discussed in the proposed rulemaking and the lack of opposing comments, FHFA is adopting as final the proposed amendment to § 1209.1(c) of the RPP with no changes.

IV. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended by HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks': Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; joint and several liability; and any other differences the Director considers appropriate. *See* 12 U.S.C. 4513(f). In preparing the proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the Banks should not be treated differently from the Enterprises. FHFA requested comment on whether the Banks should be treated differently, particularly as section 10C(d) of the Bank Act provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as they apply to the Enterprises. FHFA did not receive any comments responding to that request. Accordingly, no changes were made to the final rule as it relates to the Banks.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not

submitted any materials to OMB for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act.

The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the Enterprises and the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1209

Administrative practice and procedure, Federal home loan banks, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Federal Housing Finance Agency amends part 1209, Subchapter A, Chapter XII of title 12 of the Code of Federal Regulations as follows:

PART 1209—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1209 is revised to read as follows:

Authority: 5 U.S.C. 554, 556, 557, and 701 *et seq.;* 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581–4588, 4631–4641; and 28 U.S.C. 2461 note.

■ 2. Amend § 1209.1 by:

■ a. In paragraph (c)(2), remove the word ''and'';

■ b. In paragraph (c)(3), remove ''.'' at the end of the paragraph and add in its place ''; and''; and

■ c. Add new paragraph (c)(4) to read as follows:

§ 1209.1 Scope.

* * * * *

(c) * * *

(4) Enforcement proceedings under sections 1341 through 1348 of the Safety and Soundness Act, as amended (12 U.S.C. 4581 through 4588), and section 10C of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1430c), except where the Rules of Practice and Procedure in Subpart C are inconsistent with such statutory provisions, in which case the statutory provisions shall apply.

Dated: June 13, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–14676 Filed 6–19–13; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0484; Airspace Docket No. 13–AGL–16]

RIN 2120–AA66

Amendment of VOR Federal Airways V–55 and V–169 in Eastern North Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–55 and V–169 in eastern North Dakota. The FAA is taking this action to amend the airway descriptions contained in Part 71 by removing reference to special use airspace (SUA) exclusionary language no longer needed.

DATES: Effective date 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

In 1979, the FAA took action to amend VOR Federal airways V–55 (44 FR 43714, July 26, 1979) and V–169 (44 FR 24543, April 26, 1979) by adding airway segments that extended the airways through the Devils Lake East and Devils Lake West Military Operations Areas (MOAs). The amendments extended V–55 westward by adding an airway segment from Grand Forks, ND, to Bismarck, ND, through the existing Devils Lake East MOA and extended V–169 northward by adding an airway segment from Bismarck, ND, to Devils Lake, ND, through the Devils Lake West MOA. At that time, the Devils Lake East MOA existed from 3,500 feet mean sea level (MSL) to 10,000 feet MSL and the Devils Lake West MOA existed from 4,000 feet MSL to 10,000 feet MSL. As part of the amendment actions to V–55 and V–169, the airway descriptions excluded the airspace contained within the associated MOA lateral boundary and altitudes from the affected airway.

In 1980, the FAA circularized a proposal to change the boundary between the Devils Lake East and Devils Lake West MOAs and to raise the ceiling of the Devils Lake East MOA from 10,000 feet MSL to a ceiling of to, but not including, flight level (FL) 180. Within the proposed Devils Lake East MOA, V–55 would be available for non-participating aircraft either at 11,000 feet and above during low level intercept training (3,500 feet MSL to 10,000 feet MSL) or at 9,000 feet MSL and below during Basic Fighter Maneuvers (BFM) training (10,000 feet MSL and above) being conducted by the military. In 1981, the proposed action was approved and the MOAs amended accordingly; unfortunately, no action was taken with respect to the existing exclusionary language contained in the V–55 description under Part 71 when the Devils Lake East MOA was raised.

In 1987, the FAA circularized a similar proposal to raise the ceiling of the Devils Lake West MOA from 10,000 feet MSL to a ceiling of to, but not including, FL 180. The proposed action was approved in the same year and the MOA ceiling was amended accordingly. Again, no action was taken with respect to the existing exclusionary language contained in the V–169 description under Part 71 when the Devils Lake West MOA ceiling was raised.

The FAA notes there are numerous MOAs throughout the National Airspace System (NAS) that have VOR Federal airways charted through them, with no exclusionary language contained in those airway descriptions. In fact, the Devils Lake East MOA has three VOR Federal airways that extend through it, but only V–55 contains exclusionary language relative to the MOA. It is standard procedure for air traffic control (ATC) to re-route instrument flight rules (IFR) aircraft operating on Federal airways when the airway lies within an active MOA and IFR separation from

military activity in the MOA cannot be provided by ATC. The guidance describing this procedure is published in FAA Order 7110.65, Air Traffic Control, and the Aeronautical Information Manual for controller and pilot awareness, respectively. Additionally, although pilots operating under visual flight rules (VFR) should exercise extreme caution while flying within a MOA when military activity is being conducted, MOAs are not restrictive to VFR aircraft, which opt to fly the same routing as a VOR Federal airway, at VFR altitudes, through an active MOA. Removing the SUA exclusionary language contained in the V–55 and V–169 legal descriptions, which is redundant to existing ATC procedures does not affect the operational use or services provided by ATC to aircraft operating on the airways.

Accordingly, since this amendment is administrative in nature, having no impact to the operational use or ATC services provided to pilots flying on V–55 and V–169, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA amends Title 14, Code of Federal Regulations part 71 by amending the legal descriptions of VOR Federal airways V–55 and V–169 in the vicinity of Devils Lake, ND. Specifically, the FAA amends the V–55 description by removing the exclusionary language associated with the Devils Lake East MOA and amends the V–169 description by removing the exclusionary language associated with the Devils Lake West MOA.

VOR Federal airways are listed in paragraph 6010 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be revised subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 amends existing VOR Federal airways within the NAS.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a, FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 14 CFR 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 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6010 VOR Federal Airways.

(a) Domestic VOR Federal airways.

* * * * *

V–55

From Dayton, OH; Fort Wayne, IN; Goshen, IN; Gipper, MI; Keeler, MI; Pullman, MI; Muskegon, MI; INT Muskegon 327° and Green Bay, WI, 116° radials; Green Bay; Stevens Point, WI; INT Stevens Point 281° and Eau Claire, WI, 107° radials; Eau Claire; Siren, WI; Brainerd, MN; Park Rapids, MN; Grand Forks, ND; INT Grand Forks 239° and Bismarck, ND, 067° radials; to Bismarck.

* * * * *

V–169

From Tobe, CO; 69 MSL, Hugo, CO; 38 miles, 67 MSL, Thurman, CO; Akron, CO; Sidney, NE; Scottsbluff, NE; Toadstool, NE; Rapid City, SD; Dupree, SD; Bismarck, ND; to Devils Lake, ND.

Issued in Washington, DC, June 13, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–14657 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0081; Airspace Docket No. 12–AEA–5]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on May 21, 2013, that establishes five RNAV routes in support of the Washington, DC, Optimization of Airspace and Procedures in a Metroplex project. This correction changes the name of one waypoint (WP) in the legal descriptions of RNAV routes T–291 and T–295.

DATES: Effective date 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 2013, the FAA published a final rule in the **Federal Register** establishing five RNAV routes in the Washington, DC area (78 FR 29615). Subsequent to publication, it was determined that the name of the MORTY, MD WP (which is common to the legal descriptions of RNAV routes T–291 and T–295) needs to be changed due to its proximity to a similar sounding and spelled fix, MORTO. Potential safety concerns were identified due to the possibility for confusion of the points in radio communications and onboard Flight Management System data entry. To resolve this concern, the FAA is changing the name ''MORTY, MD'' to ''BAABS, MD'' in the descriptions of T–291 and T–295. This is a name change only. The latitude/longitude coordinates remain the same.

Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the name ''MORTY, MD WP'' as published in the **Federal Register** on May 21, 2013 (78 FR 29615; FR Doc. 2013–11969) for RNAV routes T–291 and T–295, is corrected under the descriptions as follows:

Paragraph 6011—United States Area Navigation Routes

* * * * *

T–291 [Corrected]

On page 29616, line 36, Remove ''MORTY, MD WP (Lat. 39°19′51″ N., long. 076°24′41″ W.)'' and insert ''BAABS, MD WP (Lat. 39°19′51″ N., long. 076°24′41″ W.)''

T–295 [Corrected]

On page 29616. Line 40, Remove ''MORTY, MD WP (Lat. 39°19′51″ N., long. 076°24′41″ W.)'' and insert ''BAABS, MD WP (Lat. 39°19′51″ N., long. 076°24′41″ W.)''

Issued in Washington, DC, on June 13, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–14658 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0971; Airspace Docket No. 12–ASO–31]

RIN 2120–AA66

Modification of VOR Federal Airway V–537, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF omnidirectional range (VOR) Federal airway V–537 in Georgia due to the scheduled decommissioning of the Moultrie, GA, VOR/DME navigation aid which currently forms a point along the route.

DATES: Effective date 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On October 15, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify V–537 in Georgia (77 FR 62468). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received.

Subsequently, a flight inspection was conducted to evaluate the usability of the proposed amended portion of V–537. That flight inspection found a portion of the originally proposed route amendment to be unsatisfactory. Specifically, a radial from the Macon, GA, VORTAC that had been planned to form an intersection along the route between the Greenville, FL, VORTAC and the Macon, GA, VORTAC, did not pass the expanded service volume validation. After considering other alternatives, the FAA opted to propose terminating V–537 at the Greenville VORTAC and eliminate the segment between Greenville and Macon. The FAA issued a supplemental NPRM (SNPRM) (78 FR 21856, April 12, 2013) to reopen the comment period and solicit comments on the proposed further modification of V–537. No comments were received in response the SNPRM.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airway V–537 due to the scheduled decommissioning of the Moultrie, GA, VOR/DME, which currently forms a point along the route. This action modifies V–537 by eliminating the route segments between the Greenville, FL, VORTAC and the Macon, GA, VORTAC. The modified V–537 extends between Palm Beach, FL, and Greenville, FL.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9W signed August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 modifies a VOR Federal airway to enhance the efficiency of the National Airspace System in the southeast United

States. Except for editorial changes, this rulemaking is the same as published in the SNPRM.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–537 [Amended]

From Palm Beach, FL; INT Palm Beach 356° and Treasure, FL, 143° radials; Treasure; INT Treasure 318° and Orlando. FL, 140° radials; INT Orlando 140° and Melbourne, FL 298° radials; INT Melbourne 298° and Ocala, FL 145° radials; Ocala; Gators, FL; to Greenville, FL.

Issued in Washington, DC, on June 13, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–14660 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR–5167–F–02]

RIN 2502–AI67

Streamlining Requirements Governing the Use of Funding for Supportive Housing for the Elderly and Persons With Disabilities Programs

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the Section 202 Supportive Housing for the Elderly Program (Section 202) and the Section 811 Supportive Housing for Persons with Disabilities Program (Section 811) to streamline the requirements applicable to Section 202 and Section 811 mixed-finance developments. This rule removes restrictions on the portions of developments not funded through capital advances, lifts barriers on participation in the development of the projects, and eliminates burdensome funding requirements. These changes are anticipated to attract private capital and the expertise of the private developer community to create attractive and affordable supportive housing developments for the elderly and for persons with disabilities. Through this rule, HUD also brings up-to-date certain regulations governing all Section 202 and Section 811 developments, not solely mixed-finance developments. Overall, the changes made by this rule permit greater flexibility in the design of Section 202/811 units, and extend the duration of the availability of capital advance funds.

This final rule is part of a larger effort to reform the Section 202 and Section 811 programs, which will include implementation of the changes made to these programs by the Frank Melville Supportive Housing Investment Act of 2010 and the Section 202 Supportive Housing for the Elderly Act of 2010. A subsequent rule, which will focus on the statutory changes that require rulemaking for implementation, is expected to be published in 2013.

DATES: *Effective Date:* July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Aretha Williams, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6136, Washington, DC 20410–8000; telephone number 202–708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The regulatory amendments made by this rule are designed to provide greater flexibility in the design, construction, and management of Section 202/811 mixed-finance developments, to increase such development. The Section 202/811 mixed-finance program, established by interim and final rules issued in 2003 and 2005,[1] allows for the participation of the private developer community, leveraging their capital and expertise, to create attractive and affordable supportive housing developments for the elderly or persons with disabilities. In light of the current housing market, with limited private financing for the development of supportive housing, this rule streamlines requirements pertaining to mixed-finance developments to attract private capital for the development of mixed-finance housing. This rule allows for more flexibility in such areas as the drawdown of capital advance funds and noncapital advance funds and removes certain restrictions relating to noncapital advance funds. In addition, this rule would update certain regulations governing all Section 202 and Section 811 developments, which have not been updated since 2005, to conform to changes in law, policy, and practices that affect these developments.

B. Summary of the Major Provisions of the Regulatory Action

This final rule updates the regulations governing mixed-finance developments for the Section 202 and Section 811 programs. This rule amends several definitions used in the mixed-finance development program, based on changes to these terms made by the Frank Melville Supportive Housing Investment Act of 2010 and the Section 202 Supportive Housing for the Elderly Act of 2010. These changes lessen restrictions with respect to who can be an owner. In addition, this rule removes the restriction on using HUD funds for certain amenities, exempts contracts for sale of land between owner and sponsor from conflict of interest provisions, clarifies what constitutes substantial rehabilitation, requires smoke detectors

[1] See HUD rules published on December 1, 2003, at 68 FR 67316, and on September 13, 2005, at 70 FR 54200.

and alarm devices be installed in any dwelling or facility bedroom or other primary sleeping area, extends the duration of fund reservations for capital advances, provides that HUD's requirements applicable to capital advance units are not applicable to non-202/811 supported units in the project, permits mixed-finance developers to use low-income housing tax credits (LIHTCs) more effectively, permits noncapital advance funds to be disbursed before the drawdown of capital advance funds, and permits the use of funds for paying off bridge or construction financing or repaying or collateralizing bonds.

C. Costs and Benefits

The regulations established by this final rule are limited in applicability to those Section 202 or Section 811 projects that apply as mixed-finance (Section 202/811 mixed finance projects). Section 202/811 mixed-finance projects are those with private funding to supplement Federal funding. The only new requirement established by this final rule is a requirement that owners provide a smoke detector and alarm in every bedroom or primary sleeping area. Though this requirement is new to the program regulations, the requirement is supportive of the R2–R4 multifamily standards in the International Building Code, the International Residential Code, the International Existing Building Code, and the International Property Maintenance Code, which apply in the vast majority of jurisdictions in the country through state or local adoption. Requiring smoke detectors is a requirement in most local code, and fire detectors are generally required for property insurance. Given the widespread requirement for smoke detectors, whether as a matter of state or local codes or for property insurance, the inclusion of such requirement in this regulation places no additional burden on any developer or owner complying with state or local codes. Additionally, the rule does not dictate a specific technology or product.

The fact that smoke and fire detection equipment generally save lives and protect property in a cost effective way is well supported in the literatures.[2] There may be some benefits to tenants and communities with existing projects if the improved clarity from HUD enables a dispute over smoke detector installation or maintenance to be resolved more quickly.

The primary focus of this rule is to expand flexibility in the program by removing previous prohibitions on amenities within Section 202 and Section 811 developments, but not requiring owners to provide such amenities. The amenities are those that are fairly standard in today's apartments and will benefit the residents of program units and make HUD units more attractive and capable of attracting and retaining tenants.

The final rule also removes the previous prohibition on healthcare facilities in mixed-finance Section 202 developments, but not within Section 811 developments, for the reasons discussed later in this preamble. Under the final rule, HUD now permits healthcare facilities in mixed-finance Section 202 developments so long as HUD does not finance the facilities, and the use of the facilities must be voluntary for the residents of the projects.

The removal of the previous prohibitions on amenities and healthcare facilities makes it difficult to predict their impact on future Section 202 and 811 units, as the programs together produce only a few hundred developments a year (193 in 2008, 170 in 2009, and 143 in 2010), the overall economic impact from these potentially small changes in development and unit configuration is expected to be small.

A more detailed discussion of the costs and benefits of this rule is provided in section VI of this preamble.

II. Background

A. HUD's Section 202/811 Mixed-Finance Development Program

The Section 202 and Section 811 programs were established to allow very low-income elderly persons and persons with disabilities the opportunity to live with dignity by providing affordable rental housing offering a range of supportive services to meet the needs of these populations. The American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) (AHEO Act) amended the authorizing statutes for the Section 202 program (Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)) and the Section 811 program (Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 8013)) to allow for the participation of for-profit limited partnerships in the ownership of Section 202 and Section 811 supportive housing, which helped facilitate the use of low-income housing tax credits and mixed-finance methods to infuse private capital into Section 202 and Section 811 developments. HUD's regulations governing Section 202/811 mixed-finance development are found in 24 CFR part 891, subpart F. The Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111–372) (Section 202 Act of 2010) and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–374) (Melville Act) were both signed into law on January 4, 2011 (collectively, the Acts), and amended the authorizing statutes for Section 202 and Section 811, respectively.

III. The March 2012 Proposed Rule

On March 28, 2012 (77 FR 18723), HUD published a proposed rule primarily to streamline the requirements for mixed-finance Section 202 and Section 811 developments, and provide more flexibility for program participants. Current economic conditions have reduced the availability of private financing for the development of supportive housing. To attract needed private capital, HUD determined that amendments to the Section 202 and Section 811 program regulations were necessary to further streamline the mixed-finance development process for Section 202 and 811 housing. While the existing regulations applicable to mixed-finance developments have facilitated the creation of approximately 1,017 mixed-finance units, they also, in certain circumstances, limit project sponsors from accessing private sector capital and expertise. The changes proposed in March 2012, as summarized below, and made final by this rule, provide mixed-finance owners with more options, better facilitate the use of low-income housing tax credits, and attract other private funding, and, thereby, promote the construction of supportive housing developments that include additional, non-Section 202/811 supported units for the elderly and persons with disabilities.

The Section 202 Act of 2010 and the Melville Act amended the authorizing statutes for Section 202 and Section 811, respectively, and made important reforms to the Section 202 and Section 811 programs. While the majority of the reforms made by these Acts do not directly affect the Section 202/811 mixed-finance development program, HUD is taking the opportunity to update the definitions of ''private nonprofit organizations'' to conform to the Acts, as these definitions directly impact the mixed-finance program. The Section 202 Act of 2010 and the Melville Act provide a much-needed foundation for practical improvements to the Section

[2] For example Liu Y, Mack KA, Diekman ST (2012) Smoke alarm giveaway and installation programs: an economic evaluation. American Journal of Preventive Medicine (4):385–91.

202 and Section 811 programs.[3] The regulatory amendments in this rule build upon the Acts from the 111th Congress to further modernize the operation of Section 202 and Section 811 in the mixed-finance context.

The March 28, 2012, rule proposed to amend both the general section of regulations governing the Section 202 and Section 811 programs, and the sections in part 891 specifically governing the mixed-finance program. Key changes to the program regulations proposed by the March 28, 2012, rule included the following:

- Establishing, in the case of a nonprofit organization sponsoring multiple developments, the criteria for transferring the responsibilities of a single-entity nonprofit owner of an individual development to the governing board of the sponsor that is the sponsoring organization of multiple developments;
- Revising, consistent with the Section 202 Act of 2010, the definition of ''private nonprofit organization'' to include for-profit limited partnerships of which the sole general partner is a for-profit corporation or a limited liability company that is wholly owned and controlled by one or more nonprofit organizations;
- Requiring that a corporation be ''owned and controlled'' by a nonprofit organization in the definition of ''private nonprofit organization,'' consistent with the Melville Act's removal of the term ''wholly owned'' from the definition;
- Allowing an owner or sponsor of a Section 202 development to be an ''instrumentality of a public body'';
- Including, as a qualification, an owner be a single-asset entity, and replacing the term ''single-purpose'' with ''single-asset,'' defined as an entity in which the mortgaged property is the only asset of the owner and has no more than one owner;
- Defining ''substantial rehabilitation'' as improvements to a property that is in a deteriorated or substandard condition that endangers the health, safety, or well-being of the residents, but would not include cosmetic improvements and must meet certain criteria;
- Requiring smoke detectors and alarm devices be installed in any dwelling or facility bedroom or other primary sleeping area;
- Providing that restrictions on prohibited facilities in Section 202 mixed-finance developments only apply to the capital advance-funded portion, and not to the entire development;
- Exempting, from the conflict of interest provisions, contracts for the sale of land between an owner and the sponsor or the sponsor's nonprofit affiliate;
- Providing that the requirements of paragraph (b) of § 891.130 regarding identity of interest do not apply in the mixed-finance context, while maintaining the applicability of the conflict of interest provisions in paragraph (a) of § 891.130;
- Extending the duration of availability of fund reservations for capital advances to 24 months in all cases, with the option of extending this period to 36 months;
- Providing that requirements applicable to capital advance units are not applicable to non-202/811 supported units in the project, and clarifying that the transfer of physical or financial assets of a Section 202 or Section 811 development is not permitted unless HUD determines that the transfer is part of a transaction that will ensure ''the continued operation of the capital advance units'' for at least 40 years in a manner that will provide low-income housing for the elderly or persons with disabilities;
- Permitting noncapital advance funds to be disbursed before the drawdown of capital advance funds to increase the developer's flexibility in financing the project; and
- Permitting the use of funds for paying off bridge or construction financing or repaying or collateralizing bonds.

IV. Summary of Significant Changes in this Final Rule

The following changes were made to the proposed rule at this final rule stage:

- Removal of the definitions of ''substantial rehabilitation'' and ''repairs, renovations, and improvements'', which also means the removal of the $6500 threshold and the minimum useful life of 55 years;
- Re-adding the definition of ''rehabilitation'' that was originally in part 891, and adding that an improvement of an existing structure requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. The useful life period commences upon execution of the capital advance agreement.
- Allowing as eligible units two-bedroom resident units, so long as a portion of the units are financed by other sources. Resident units may be two-bedroom units if the square footage in excess of the one-bedroom size limits is treated as excess amenities.

V. Discussion of Public Comments Received on the March 28, 2012, Proposed Rule

This final rule follows publication of the March 28, 2012, proposed rule and takes into consideration public comments received on that proposed rule. The public comment period closed on May 29, 2012. HUD received five public comments (one comment submitted on behalf of multiple organizations) in response to the proposed rule. Comments were submitted by a housing corporation, a housing finance agency, nonprofit organizations, and an association of aging services organization, an affordable housing management organization, a community development support organization, and private individuals. None of the commenters opposed the rule. Overall the commenters were supportive of the changes proposed by the March 28, 2012, rule.

One commenter welcomed HUD to make any other changes that would make easier the process of creating low-income housing for seniors and persons with disabilities, as the need for such housing grows rapidly. Another commenter stated that the rule brought the requirements of the Section 202 and 811 programs into greater conformance with other programs, which would facilitate coordination among programs.

Another commenter stated that the most significant of the changes from the proposed rule were the revisions relating to the drawdown of capital grant funds in mixed-finance situations. The commenter said that greater flexibility in the scheduling of drawdown of noncapital advance funds would be very helpful. The commenter also stated that the ability to apply Section 202 capital advance funds to repay bridge financing would solve a serious problem with the existing regulations, which the commenter stated conflicted with requirements of the Internal Revenue Service. The commenter stated that the existing regulations required virtually every mixed-finance project utilizing LIHTC equity to apply for and obtain a HUD waiver in order to utilize tax-exempt bond proceeds in the manner required

[3] HUD issued a notice (H 2012–8) entitled ''Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans'' on May 4, 2012. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.* HUD also issued a Notice of Funding Availability on May 15, 2012, for the Section 811 Project Rental Assistance Demonstration program authorized by the Melville Act (funding provided under the Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112–55, 125 Stat. 552). See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa12/sec811PRAdemo.*

by the Internal Revenue Code. The commenter stated that the proposed change would save substantial time and expense, and reduce uncertainty in the development process.

Another commenter supported the proposed change to the funding reservation deadline, stating that HUD recognized the complexity of assembling all the resources needed to construct a Section 202 or Section 811 project, which makes it very difficult to meet the current 18-month funding reservation deadline, and thus resulted in a very high frequency of requests to HUD for time extensions. The commenter explained that creating and processing extension requests is not a good use of time for either developer staff or HUD staff, and the extension of the basic term to 24 months (with the possibility of extensions to 36 months) is much more realistic.

Another commenter praised the removal of the ban on individual unit balconies and decks, trash compactors, washers, and dryers in units that are funded with a HUD capital grant. This commenter stated that HUD recognized that in today's market these amenities cannot reasonably be regarded as excessive, and instead are essential to assure long-term marketability and economic viability of these properties.

However, the commenters, although supportive of the changes, did raise a few issues about specific amendments offered by the March 2012 rule, and these issues and HUD's responses follow.

Comment: Conflict of interest. Two comments addressed the conflict of interest changes under 24 CFR 891.130. One commenter stated that if a sponsoring organization of multiple developments is now able to assume responsibilities for financial compliance and administrative responsibilities for the single-entity, nonprofit owner, the sponsor should also be able to serve as property manager for the project. This commenter said that this kind of situation should not be considered a conflict of interest under § 891.130, and should not be subject to the limitation that no more than two persons salaried by the sponsor or management affiliate thereof serve as nonvoting directors. The commenter explained that effective property management is the key to a compliant project, and a sponsor with multiple projects needs the ability to serve in this capacity without restriction in order to manage its portfolio. This commenter stated that since HUD approves property management fees, there should be no concerns of undue financial benefit to the sponsor. This commenter asked how a sponsor can exercise the role envisioned by the Melville Act if the sponsor cannot have more than two nonvoting members on the owner board when it elects to manage its own Section 202 portfolio of properties.

Another commenter applauded HUD for the proposed amendment to § 891.130 to establish that the sale of land between related parties is not necessarily deemed to constitute a conflict of interest, stating that this change will be particularly helpful because very often the land for a new project is most efficiently obtained by purchasing excess real estate from an affiliated nonprofit entity.

HUD Response. The change to 24 CFR 891.205 allows HUD to determine the criteria for transferring the responsibilities of a single-entity, nonprofit owner of an individual development to the governing board of the sponsoring organization. The act of transferring responsibilities to the governing board of the sponsor does not require those board members to also replace or become board members of the owner entity. Therefore, property management responsibilities may be performed by the sponsor without adding more than two nonvoting members to the owner board of directors and causing a conflict of interest. As stated, the criteria for transferring responsibilities of an owner will be determined by HUD through subsequent guidance. HUD will consider allowing more than two persons salaried by the sponsor or management affiliate to serve as nonvoting directors on the owner's board of directors.

Comment: Definition of private nonprofit organization. Two commenters expressed concerns with the changes to the definition of ''private nonprofit organization''. One commenter explained that according to the proposed rule, the Section 202 Act of 2010 changed the definition to allow for ownership of projects by limited partnerships of which the sole general partner is a for-profit corporation or a limited liability company that is wholly owned and controlled by one or more nonprofit organizations. This commenter further explained that the proposed rule states that the Melville Act did not extend the definition to include limited liability companies and, therefore, does not appear to provide for a limited liability company to be the general partner. This commenter stated that while the Melville Act did not explicitly extend this definition, neither did it prohibit liability companies from acting as the general partner of a limited partnership owner. This commenter pointed out that the intent of the Melville Act as well as these regulations is to facilitate use of LIHTCs, and no obvious purpose is served by distinguishing between the allowable ownership structures for Section 811 and Section 202 projects.

In addition, this commenter stated that by allowing use of a limited liability corporation (LLC), HUD would facilitate nonprofit corporations with experience in developing housing and providing supportive services to persons with disabilities to join with other nonprofit developers with experience in LIHTCs to cosponsor and develop such projects, without incorporating new nonprofit corporations to act as the general partner. The commenter stated that, in California, this would save significant time and cost that would otherwise be spent in securing tax exempt status for the new nonprofit corporation and recognition by the state of the eligibility of the new nonprofit sponsor to receive real estate tax exemptions for the proposed project. This commenter explained that eliminating this step would therefore assist such sponsors in meeting the stringent deadlines imposed by the California Tax Credit Allocation Committee for start of construction of projects that are allocated 9 percent tax credits. This commenter requested that HUD adopt the same language for Section 811 projects as for Section 202 projects in these regulations, to allow for use of a limited liability company or LLC that is wholly owned and controlled by one or more nonprofit organizations as the general partner in a mixed-finance development.

Another commenter stated that the preamble to the proposed rule creates potential ambiguity regarding the definition of ''private nonprofit organization''. This commenter explained that the preamble stated: ''An additional change made by the Section 202 Act of 2010 is that the definition will now include for-profit limited partnerships of which the sole general partner is a for-profit corporation or a limited liability company that is wholly owned and controlled by one or more nonprofit organizations.'' The commenter found that it is possible to interpret this sentence as saying that any for-profit corporation (and not just a corporation controlled by nonprofit entities) can be the general partner of a mixed-finance owner. This commenter explained that while the regulation itself is clear on this point, it would be helpful if the preamble to the final rule eliminates the possible ambiguity.

HUD Response. The proposed rule incorporates the latest statutory changes to the Section 811 program. The

Melville Act of 2010 did not add for-profit limited liability companies as an eligible general partner. A technical correction to the Melville Act is under HUD consideration.

With respect to the comment about the potential ambiguity of the definition of ''nonprofit organization,'' HUD agrees that additional clarity would be helpful. HUD clarifies that the additional change made by the Section 202 Act of 2010 means that the definition of ''nonprofit organization'' will now include for-profit limited partnerships, of which the sole general partner is a for-profit corporation or a limited liability company, and that are both wholly owned and controlled by one or more nonprofit organizations.

Comment: Definitions of repairs and substantial rehabilitation. One commenter stated that under HUD's rule, when funding both ''repairs, replacements, and improvements'' and ''substantial rehabilitation,'' the property is required to achieve a 55-year useful life, and that an exception to this standard is allowed when rehabilitation is limited to substantially replacing two or more major building components. The commenter stated that it did not understand the programmatic significance of designating rehabilitation as either ''repairs, replacements and improvements'' or ''substantial rehabilitation.'' The commenter stated that if there is no significance in terms of eligibility, financing terms and conditions, or useful life, the definition section could be simplified by eliminating these two definitions. The commenter suggested that the two definitions could be replaced by simply imposing a useful life requirement when rehabilitation of any amount is performed, with the proposed exception of the limited replacement of two or more major building components.

Another commenter found the definition of ''substantial rehabilitation'' to be very long, somewhat confusing, and inconsistent with the widely used and more streamlined definition contained in section 5.12 of the Multifamily Accelerated Processing (MAP) Guide. This commenter stated that in the Section 202 context, HUD has recently used the MAP Guide definition of substantial rehabilitation in Notice H2012–8[4], relating to the refinancing of Section 202 direct loans. This commenter offered that another definition was not needed given that the term ''substantial rehabilitation'' is used only in the subparts of part 891, relating to the old Direct Loan program, which is no longer being funded. The commenter stated if a definition of ''substantial rehabilitation'' is needed for current Section 202/811 construction, then HUD should use the definition currently contained in the MAP Guide and apply the definition consistently throughout all of HUD's programs.

HUD Response. HUD has revised the final rule by eliminating the definitions of ''substantial rehabilitation'' and ''repairs, renovations, and improvements.'' Therefore, a $6500 threshold no longer applies. The definition of ''rehabilitation'' will remain in part 891 and will mirror the previous language, except that an improvement of an existing structure requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. HUD agrees with the commenters that 55 years was an over investment. HUD concluded that it was reasonable to tie the useful life to the term of the capital advance. See § 891.170, entitled ''Repayment of capital advance.''

Comment: Minimum investment and useful life requirements. HUD specifically solicited public comment on the minimum investment of $6500 and the minimum useful life of 55 years under the definitions of ''repairs, replacements and improvements'' and ''substantial rehabilitation'' (77 FR 18725). Two commenters had concerns about these specific requirements. One commenter recommended reducing the 55-year useful life requirement to 40 years for both ''repairs, replacements and improvements'' and ''substantial rehabilitation.'' The commenter stated that while a 55-year useful life is a laudable goal, it does not conform to other common standards of useful life of residential rental property, such as the income tax code. The commenter also stated that a 55-year useful life standard creates incentives to over-invest in properties to drive up per-unit development costs to achieve the longer useful life.

Another commenter stated that if the MAP Guide definition is not adopted in the final rule, then the concept of rehabilitating ''to a useful life of 55 years'' is disproportionately high for a $6500 threshold. The commenter stated that any required useful life should not exceed the term of the capital advance. The commenter suggested that HUD should clarify the date at which the useful life period begins and state whether the ''useful life'' requirement pertains only to the $6500 per-dwelling-unit standard, or also applies to the 15 percent-of-estimated-replacement cost standard. Lastly, the commenter agreed that as suggested by the **Federal Register** notice, the long-standing $6500/unit minimum for ''substantial rehabilitation'' needed to be updated periodically for inflation.

HUD Response. For the reasons provided in the response to the preceding comment, HUD has removed the $6500 threshold and the useful life minimum of 55 years from the final rule.

Comment: Definition of single asset entity. One commenter suggested that HUD revise the definition of ''single asset entity'' to read: ''Single-asset entity, for the purpose of this subpart, means an entity in which the mortgaged property is the only asset of the owner, and the entity is the only owner of the property.''

HUD Response. HUD accepts this comment and has revised the definition accordingly under § 891.105.

Comment: Health-related facilities. One commenter approved of the proposed change to § 891.813, stating that the change would allow, for mixed-finance project, non-202 funds to be used for health-related facilities, such as infirmaries and nursing stations. This commenter stated that this change is a helpful step, and furthers HUD's goal of assuring that Section 202 projects can serve frail seniors. This commenter requested that HUD recognize the needs of the market and of the clientele, as well as be in line with HUD's evolving policies, and urged HUD to be more open and allow Section 202 costs of construction to cover designs in accordance with ''universal design'' guidelines, to assure that seniors can continue to function comfortably in their homes as they age. In addition, the commenter stated that HUD should be more open to allowing two-bedroom units to be financed by the Section 202 program, to accommodate low-income frail residents who require live-in caretakers.

HUD Response. The most current Section 202 guidelines encourage the use of universal design and consider it as an eligible cost. Universal design is the design of the living environment to be usable by all people regardless of ability, without the need for adaptation or specialized design. Universal design recognizes the need for living spaces to be barrier-free and provide easy mobility and independence for people with a broad variety of physical needs. Universal design is distinct from Federal accessibility requirements under the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and

[4] See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.*

titles II and III of the Americans with Disabilities Act, as applicable. All applicable Federal accessibility requirements must be met in projects promoting universal design.

HUD will not allow two-bedroom units to be financed by the Section 202 program. However, as part of this final rule, HUD will allow two-bedroom resident units, so long as a portion of the units are financed by other sources. Under § 891.210, resident units may be two-bedroom units provided that the square footage in excess of the one-bedroom size limits are treated as excess amenities as specified in § 891.120.

VI. Costs and Benefits of the New Program Regulations

The changes made to the program regulations governing Section 202/Section 811 mixed-finance developments are largely directed to expanding flexibility in the program. The only change in the final rule that represents a new requirement for program participants is that owners must provide a smoke detector and alarm in every bedroom or primary sleeping area. Though this constitutes a new requirement added to the program regulations, it is not a new requirement for the majority of owners because smoke detectors placed in every bedroom or primary sleeping area is already required by most local codes.[5]

Apart from establishing this requirement, the changes made by this final rule are directed to removing prohibitions and providing more flexibility to owners and investors. The rule removes some previous prohibitions on providing certain amenities within Section 202 and Section 811 developments. The final rule allows the program to fund units that contain dishwashers, trash compactors, washers and dryers, and units that have patios or balconies attached. The final rule also removes the previous prohibition on having healthcare facilities in mixed-finance Section 202 developments, but not in Section 811 developments. With respect to Section 811 developments, as stated in the proposed rule, ''HUD recognizes the importance of maintaining the restrictions on prohibited facilities for Section 811 developments for both capital advance and non-capital advance portions of the project. HUD is committed to preventing the isolation of persons with disabilities that might occur should medical facilities be contained in Section 811 developments.'' (See 77 FR 18725, third column.)

HUD's previous regulations had a blanket prohibition against medical facilities, as a safeguard against the institutionalization of the elderly and disabled populations. While, through this final rule, HUD removes the prohibition on certain amenities and having healthcare facilities in Section 202 developments, HUD does put in place of these prohibitions a requirement to include these amenities or healthcare facilities. Where healthcare facilities are located in Section 202 developments, use of the facilities must be voluntary for the residents of the projects. Consequently, removing the prohibition on these amenities and facilities is unlikely to increase costs to the program, especially since there is no requirement to provide these amenities or facilities. With respect to amenities, the amenities are those that are fairly standard in today's apartments and will benefit the residents of program units and make HUD units more capable of retaining tenants, thereby reducing vacancies.

While providing the amenities is not expected to increase program cost, HUD submits that one benefit may be that the wider range of allowable amenities may combat any discrimination against subsidized housing by reducing the potential for program-participating units and their occupants to be singled out as subsidized units within a mixed-finance development. The voluntary nature of these changes made by this final rule makes it difficult to predict their impact on future Section 202/811 mixed-finance units, as the programs together produce only a few hundred developments a year (193 in 2008, 170 in 2009, and 143 in 2010). The overall economic impact from these potentially only small changes in development and unit configuration is expected to be small.

The final rule also provides benefits from improving government processes. For example, extending the time of availability of capital advance funds from 18 to 24 months should limit the number of waivers HUD needs to process as developers regularly exceed the 18-month timeline. In 2010, HUD processed 49 such waivers in what is described as a time consuming, case specific process, which was 33 percent of the waivers the program office processed that year.

The remaining changes in the final rule are definitional and offer participants greater flexibility and clarity within the program at no obvious cost to the program or participants.

VII. Findings and Certifications

Regulatory Review—Executive Order 13563

Executive Order 13563 directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule, consistent with Executive Order 13563, lessens restrictions in the Section 202 and Section 811 programs, including the removal of some previous prohibitions on amenities and healthcare facilities, broadens participation through the expansion of the definition of ''private nonprofit organization,'' and streamlines and improves program operations to attract additional private capital and expertise from the private developer community. As provided in the discussion in section VI of this preamble, the regulatory changes provide significantly more flexibility to participants in the development of Sections 202/811 mixed-finance developments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In the mixed-finance context, this final rule amends HUD's Section 202 and 811 program regulations governing capital advances, for-profit limited partnerships, and mixed-finance development methods to facilitate the development and availability of housing for the elderly and persons with disabilities. These regulatory amendments do not impose any additional regulatory burdens on entities participating in these programs. As has been discussed in the preamble to this final rule, these amendments reduce regulatory burden and increase flexibility in mixed-financed developments in order to attract private capital and expertise to the construction of supportive housing for the elderly and persons with disabilities. These regulatory changes would also streamline the use of low-income tax credits, as well as the obtaining of funding from other sources. National, regional, and local developers utilize the mixed-finance program and will save time and gain efficiency from no longer having to request regulatory waivers.

[5] See *http://www.usfa.fema.gov/downloads/pdf/campaigns/smokealarms/smoke_alarm_requirements.pdf.*

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal Federal Housing Administration single-family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 891 as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 1. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 2. In § 891.105, revise the introductory text and the definition of ''rehabilitation,'' and add the definitions of ''Acquisition with or without repair,'' and ''Single-asset entity,'' in alphabetical order to read as follows:

§ 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, 891.505, and 891.805, as applicable.

Acquisition with or without repair means the purchase of existing housing and related facilities.

* * * * *

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. The useful life period commences upon execution of a capital advance agreement.

* * * * *

Single-asset entity, for the purpose of this subpart, means an entity in which the mortgaged property is the only asset of the owner, and the entity is the only owner of the property.

* * * * *

■ 3. In § 891.120, revise paragraphs (a), (c), and (d) to read as follows:

§ 891.120 Project design and cost standards.

* * * * *

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards as set forth in 24 CFR part 200, subpart S.

* * * * *

(c) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include atriums, bowling alleys, swimming pools, saunas, and jacuzzis. Sponsors may include certain excess amenities, but they must pay for them from sources other than the Section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the Section 202 or 811 project rental assistance contract.

(d) *Smoke detectors.* Smoke detectors and alarm devices must be installed in accordance with standards and criteria acceptable to HUD for the protection of occupants in any dwelling or facility bedroom or other primary sleeping area.

* * * * *

■ 4. In § 891.130:

■ a. Amend paragraph (a)(2)(ii) by removing the word ''and'' that follows the semicolon;

■ b. Amend paragraph (a)(2)(iii) by removing the period at the end and adding in its place '';and'';

■ c. Add a new paragraph (a)(2)(iv); and

■ d. Remove paragraph (c) to read as follows:

§ 891.130 Prohibited relationships.

* * * * *

(a) * * *

(2) * * *

(iv) Contracts for the sale of land.

* * * * *

■ 5. Revise § 891.160 to read as follows:

§ 891.160 Audit requirements.

Nonprofit organizations receiving assistance under this part are subject to the audit requirements of 24 CFR 5.107.

■ 6. Revise § 891.165 to read as follows:

§ 891.165 Duration of capital advance.

(a) The duration of the fund reservation for a capital advance with construction advances is 24 months from the date of initial closing. This duration can be up to 36 months, as approved by HUD on a case-by-case basis.

(b) The duration of the fund reservation for projects that elect not to

receive any capital advance before construction completion is 24 months from the date of issuance of the award letter to the start of construction. This duration can be up to 36 months, as approved by HUD on a case-by-case basis.

■ 7. In § 891.170, revise paragraph (b) to read as follows:

§ 891.170 Repayment of capital advance.

* * * * *

(b) *Transfer of assets.* The transfer of physical and financial assets of any project under this part is prohibited, unless HUD gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation, consumer cooperative (under the Section 202 Program), a private nonprofit organization (under the Section 811 Program), or an organization meeting the definition of ''mixed-finance owner'' in § 891.805, is part of a transaction that will ensure the continued operation of the capital advance units for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

■ 8. In § 891.205, revise the definitions of ''*Owner,*'' ''*Private nonprofit organization,*'' and paragraph (3) of the definition of ''*Sponsor*'' to read as follows:

§ 891.205 Definitions.

* * * * *

Owner means a single-asset private nonprofit organization that may be established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Owner includes an instrumentality of a public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or be under the direction of persons or firms seeking to derive profit or gain therefrom.

Private nonprofit organization means any incorporated private institution or foundation:

(1) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) That has a governing board:

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

(ii) Which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, HUD may determine the criteria or conditions under which financial, compliance, and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

(3) Which is approved by HUD as to financial responsibility.

* * * * *

Sponsor * * *

(3) That is approved by the Secretary as to administrative and financial capacity and responsibility. The term Sponsor includes an instrumentality of a public body.

* * * * *

■ 9. Section 891.210 is revised to read as follows:

§ 891.210 Special project standards.

(a) *In general.* In addition to the applicable project standards in § 891.120, resident units in Section 202 projects are limited to efficiencies or one-bedroom units, except as specified under paragraph (b) of this section. If a resident manager is proposed for a project, up to two bedrooms could be provided for the resident manager unit.

(b) *Exception.* Resident units in Section 202 projects may be two-bedroom units if a portion of the units are financed by other sources. Resident units may be two-bedroom units provided that the square footage in excess of the one-bedroom size limits are treated as excess amenities as specified in § 891.120.

■ 10. In § 891.305, revise the heading of the definition of ''*Nonprofit organization*'' to read ''*Private nonprofit organization*'' and redesignate the definition in correct alphabetical order, and revise the first sentence of the definition of ''*Owner*'' to read as follows:

§ 891.305 Definitions.

* * * * *

Owner means a single-asset private nonprofit organization established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part.

* * *

* * * * *

■ 11. Revise § 891.805 to read as follows:

§ 891.805 Definitions.

In addition to the definitions at §§ 891.105, 891.205, and 891.305, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of housing under this part, means a single-asset, for-profit limited partnership of which a private nonprofit organization is the sole general partner. The purpose of the mixed-finance owner must include the promotion of the welfare of the elderly or persons with disabilities, as appropriate.

Private nonprofit organization, for the purpose of this subpart, means:

(1) In the case of supportive housing for the elderly:

(i) An organization that meets the requirements of the definition of ''private nonprofit organization'' in § 891.205; and

(ii) A for-profit limited partnership, the sole general partner of which owns at least one-hundredth of one percent of the partnership assets, whereby the sole general partner is either: an organization meeting the requirements of § 891.205 or a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements of § 891.205 or a limited liability company wholly owned and controlled by one or more organizations meeting the requirements of § 891.205. If the project will include units financed with the use of federal Low-Income Housing Tax Credits and the organization is a limited partnership, the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5), apply. The general partner may also be the sponsor, so long as it meets the requirements of this part for sponsors and general partners.

(2) In the case of supportive housing for persons with disabilities:

(i) An organization that meets the requirements of the definition of ''private nonprofit organization'' in § 891.305; and

(ii) A for-profit limited partnership, the sole general partner of which owns at least one-hundredth of one percent of the partnership assets, whereby the sole general partner is either: an organization meeting the requirements of § 891.305 or a corporation owned and controlled by an organization meeting the requirements of § 891.305. If the project will include units financed with the use of federal Low-Income Housing Tax

Credits and the organization is a limited partnership, the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5), apply. The general partner may also be the sponsor, so long as it meets the requirements of this part for sponsors and general partners.

■ 12. In § 891.813, revise paragraphs (b) and (c) to read as follows:

§ 891.813 Eligible uses for assistance provided under this subpart.

* * * * *

(b) Assistance under this subpart may not be used for excess amenities, as stated in § 891.120(c), or for Section 202 ''prohibited facilities,'' as stated in § 891.220. Such amenities or Section 202 prohibited facilities may be included in a mixed-finance development only if:

(1) The amenities or prohibited facilities are not financed, maintained, or operated with funds provided under the Section 202 or Section 811 program;

(2) The amenities or prohibited facilities are designed with appropriate safeguards for the residents' health and safety; and

(3) The assisted residents are not required to use, participate in, or pay a fee for the use or maintenance of the amenities or prohibited facilities, although they are permitted to do so voluntarily. Any fee charged for the use, maintenance, or access to amenities or prohibited facilities by residents must be reasonable and affordable for all residents of the development.

(c) Notwithstanding any other provision of this section, § 891.315 on ''prohibited facilities'' shall apply to mixed-finance developments containing units assisted under Section 811.

■ 13. In § 891.830, revise paragraphs (b) and (c)(4) to read as follows:

§ 891.830 Drawdown.

* * * * *

(b) Non-capital advance funds may be disbursed before capital advance proceeds or the capital advance funds may be drawn down in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

(c) * * *

(4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project, which include costs stated in 12 U.S.C. 1701q(h) and 42 U.S.C. 8013(h). Capital advance funds may be used for paying off bridge or construction financing, or repaying or collateralizing bonds, but only for the portion of such financing or bonds that was used for capital advance units; and

* * * * *

■ 14. Revise § 891.832 to read as follows:

§ 891.832 Prohibited relationships.

(a) Paragraph (a) of § 891.130, describing conflicts of interest, applies to mixed finance developments.

(b) Paragraph (b) of § 891.130, describing identity of interest, does not apply to mixed-finance developments.

■ 15. Revise § 891.848 to read as follows:

§ 891.848 Project design and cost standards.

(a) The project design and cost standards at § 891.120 apply to mixed-finance developments under this subpart, with the exception of § 891.120(c), subject to the provisions of § 891.813(b).

(b) For Section 202 mixed-finance developments, the prohibited facilities requirements described at § 891.220 shall apply to only the capital advance-funded portion of the Section 202 mixed-finance developments under this subpart, subject to the provisions of § 891.813(b).

(c) For Section 811 mixed-finance developments, the prohibited facilities requirements described at § 891.315 shall apply to the entire mixed-finance development.

Dated: June 17, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–14721 Filed 6–19–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 518

RIN 3141–AA44

Self-Regulation of Class II Gaming

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Final rule; technical and correcting amendments.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is revising its rules concerning the issuance of certificates for tribal self-regulation of Class II gaming: To correct a section heading in the table of contents; to correct a conflict in the deadlines contained in one of the sections which, if left uncorrected, would at times require the Commission to issue certain preliminary findings on the same day that it receives a tribe's response to the Office of Self Regulation's recommendation and report; and to correct referencing errors in two of its rules.

DATES: The effective date of these regulations is September 1, 2013.

FOR FURTHER INFORMATION CONTACT: John Hay, Senior Attorney, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act established the Commission and set out a comprehensive framework for the regulation of gaming on Indian lands. While the Act requires the Commission to ''monitor class II gaming conducted on Indian lands on a continuing basis,'' 25 U.S.C. 2706(b)(1), any Indian tribe which operates a Class II gaming facility and meets certain other conditions may petition the Commission for a certificate of self-regulation. 25 U.S.C. 2710(c). The Act authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10).

II. Development of the Rule

On April 4, 2013, the Commission published a final rule amending its regulations for the review and approval of petitions seeking the issuance of a certificate for tribal self-regulation of Class II gaming. 78 FR 20236, April 4, 2013. After publication, the Commission discovered that the deadline contained in 25 CFR 518.7(c)(5) for tribes to respond to the Office of Self Regulation's recommendation and report, and the deadline contained in 25 CFR 518.7(d) for the Commission to issue preliminary findings to said recommendation and report, could potentially fall on the same day, thus preventing the Commission from fully considering the tribal response before it has to issue its preliminary findings. Therefore, the Commission is revising its regulations to provide that its preliminary findings will be issued 45 days after receipt of the recommendation and report, so that the Commission has sufficient time to review and consider adequately a tribe's response to said recommendation and report. This revision is consistent with how the Commission envisioned tribes

obtaining a certificate of self-regulation and ensures that all tribal submissions will be fully considered before the Commission issues a decision.

Additionally, the Commission has discovered that the final rule published on April 4, 2013, contained: An incorrect section heading in the part's table of contents; incorrectly referenced a specific section in one of its rules; and that the reference to IGRA contained in § 518.10(a) should read ''25 U.S.C. 2710(b)(2)(C).'' Therefore, the Commission is also revising its regulations to correct the table of contents, and to correct the referencing errors in § 518.8(b) and § 518.10(a).

III. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comments are impracticable, unnecessary, or contrary to the public interest. Here, because this rule is not yet in effect and will not be so until September 1, 2013, and because the revisions herein are technical in nature and intended to correct inadvertent errors, the Commission is publishing a technical amendment.

Regulatory Matters

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions, and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* and assigned OMB Control Number 3141–0008. The OMB control number expires on October 31, 2013.

List of Subjects in 25 CFR Part 518

Gambling, Indian-lands, Indian-tribal government, reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, the Commission is amending 25 CFR part 518 as follows:

PART 518—SELF-REGULATION OF CLASS II GAMING

■ 1. The authority citation for part 518 continues to read as follows:

Authority: 25 U.S.C. 2706(b)(10); E.O. 13175.

■ 2. Revise the section heading to § 518.14 to read as follows:

§ 518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?

* * * * *

■ 3. Revise § 518.7(d) to read as follows:

§ 518.7 What process will the Commission use to review and certify petitions?

* * * * *

(d) After receiving the Office of Self-Regulation's recommendation and report, and a tribe's response to the report, the Commission shall issue preliminary findings as to whether the eligibility and approval criteria are met. The Commission's preliminary findings will be provided to the tribe within 45 days of receipt of the report.

* * * * *

§ 518.8 [Amended]

■ 4. In § 518.8(b), remove the reference ''§ 518.11'' and add in its place ''§ 518.9 of this part.''

§ 518.10 [Amended]

■ 5. In § 518.10(a), remove the reference ''25 U.S.C. 2710(b)(2)(c)'' and add in its place ''25 U.S.C. 2710(b)(2)(C).''

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2013–14669 Filed 6–19–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0415]

RIN 1625–AA00

Safety Zones; Fourth of July Fireworks Displays Within the Captain of the Port Charleston Zone, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones during Fourth of July Fireworks Displays on navigable waterways in Murrells Inlet, and North Myrtle Beach, South Carolina. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 9 p.m. until 10:30 p.m. on July 4, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0415. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this

rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Christopher L. Ruleman, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing or submitting material to 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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive necessary information from the event sponsors until recently. As a result, the Coast Guard does not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

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 other 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Multiple fireworks displays are planned for Fourth of July celebrations throughout the Captain of the Port Charleston Zone. The fireworks will explode over navigable waters of the United States. The Coast Guard is establishing two temporary safety zones for Fourth of July Fireworks Displays on navigable waters of the United States within the Captain of the Port Charleston Zone. The two safety zones will be enforced from 9 p.m. until 10:30 p.m. on July 4, 2013.

The purpose of the rule is to protect the public from the hazards associated with launching fireworks over navigable waters of the United States.

C. Discussion of the Rule

The first safety zone is in Murrells Inlet, South Carolina. The safety zone encompasses all waters within a 500 foot radius around Veterans Pier, from which the fireworks will be launched, located on the Atlantic Intracoastal Waterway.

The second safety zone is in North Myrtle Beach, South Carolina. The safety zone encompasses all waters within a 600 foot radius around Cherry Grove Pier, from which the fireworks will be launched, located on the Atlantic Ocean.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Charleston via telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the safety zones is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zones by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) Each safety zones will be enforced for a maximum of 1.5 hours; (2) vessel traffic in the areas is expected to be minimal during the enforcement periods; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any of the safety zones without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding areas during the enforcement periods; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Broadcast Notice to Mariners and Marine Safety Information Bulletins.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within

any of the safety zones described in this rule during the respective enforcement periods. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, 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 is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. This rule involves establishing two temporary safety zones that will be enforced for no more than 1.5 hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

■ 2. Add a temporary § 165.T07–0415 to read as follows:

§ 165.T07–0415 Safety Zones; Fourth of July Fireworks Displays within the Captain of the Port Charleston Zone, SC.

(a) *Regulated areas.* The following regulated areas are safety zones. All coordinates are North American Datum 1983.

(1) *Murrells Inlet, South Carolina.* All waters within a 500 foot radius around Veterans Pier, from which the fireworks will be launched, located on the Atlantic Intracoastal Waterway at approximate position 33°33′23″ N, 79°01′54″ W.

(2) *North Myrtle Beach, South Carolina.* All waters within a 600 foot radius around Cherry Grove Pier, from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 33°49′38″ N, 78°37′54″ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and

other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

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

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

(3) The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Effective date.* This rule is effective from 9 p.m. until 10:30 p.m. on July 4, 2013.

Dated: June 6, 2013.

M.F. White,

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

[FR Doc. 2013–14666 Filed 6–19–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0961; FRL–9824–5]

Approval and Promulgation of Air Quality Implementation Plans; Charlotte, Raleigh/Durham and Winston-Salem Carbon Monoxide Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina Department of Environment and Natural Resources (NC DENR), on August 2, 2012. Specifically, the State submitted limited maintenance plan updates for carbon monoxide (CO), showing continued attainment of the 8-hour CO national ambient air quality standard for the Charlotte, Raleigh/Durham and Winston-Salem Areas. EPA is approving this SIP revision because the State has demonstrated that the revision is consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective July 22, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0961. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Analysis of the State's Submittal
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I. Analysis of the State's Submittal

Section 175A of the Clean Air Act (CAA) contains four subsections (i.e., 175A(a)–(d)) pertaining to maintenance plans. Section 175A(a) establishes requirements for the maintenance plans associated with initial SIP redesignation requests. North Carolina previously addressed the 175A(a) requirements for the CO NAAQS and the State's redesignation requests and associated maintenance plans were ultimately approved by EPA for all three of North Carolina's CO areas as a result. *See* 59 FR 48399 and 60 FR 39258.

Section 175A(b) requires states to submit an update to the maintenance plan eight years following the original redesignation to attainment. For the section 175A(b) update, the state must outline methods for maintaining the pertinent NAAQS for ten years after the expiration of the ten-year period as referred to in subsection (a) (i.e., North Carolina's maintenance plan updates must outline methods for maintaining the CO NAAQS through 2015). NC DENR satisfied the requirements for the second maintenance plans for all of its CO maintenance areas, and EPA subsequently approved NC DENR's second maintenance plan for each of the State's CO maintenance areas. *See* 71 FR 14817, March 24, 2006. Although North Carolina has previously satisfied the requirements for the 175A(b) maintenance plan updates for all of its CO areas, the State has elected to convert these maintenance plans to limited maintenance plans.[1] A summary of EPA's analysis for this revision is provided below.

Finally, with respect to the remaining sub-sections of section 175A, EPA notes that sub-section (c) does not apply to this rulemaking, given that EPA has previously redesignated the Charlotte, Raleigh/Durham, and Winston-Salem areas to attainment for CO. Section 175A(d), which includes the contingency provisions requirements associated with maintenance plans, is relevant to today's revision and is addressed in section A4, below.

A. Consistency With the October 6, 1995, Memorandum

EPA's interpretation of section 175A of the CAA, as it pertains to limited maintenance plans for CO, is contained in the October 6, 1995, Memorandum from Joseph W. Praise to the Air Branch Chiefs, Regions I–X, entitled ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas.'' See the docket for today's

[1] A limited maintenance plan generally includes all the elements for a full section 175A maintenance plan except that a limited maintenance plan is not required to include motor vehicle emissions budgets for transportation conformity purposes. For more details on limited maintenance plans see the October 6, 1995, Memorandum from Joseph W. Praise to the Air Branch Chiefs, Regions I–X, entitled ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas.'' A copy of the October 6, 1995, Memorandum is included in the docket for today's rulemaking.

rulemaking for a copy of this memorandum. North Carolina addressed the five major elements of that policy, as follows:

1. Attainment Inventory

The state is required to develop an attainment emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time the SIP is developed and should include the emissions during the time period associated with the monitoring data showing attainment. It should be based on actual ''typical CO season day'' emissions for all source classifications (i.e., stationary point and area sources and nonroad and onroad mobile sources) for the attainment year. In its August 2, 2012, submittal, NC DENR provided a comprehensive CO emissions inventory for nonroad mobile, onroad mobile, point, and area sources for the Charlotte, Raleigh-Durham, and Winston-Salem CO Maintenance Areas.

NC DENR collected or developed the point source emissions inventory from stationary sources that have the potential to emit more than five tons per year of CO emissions from a single facility and are required to have an operating permit. The stationary area source inventory is estimated on a county level and consisted of those sources whose emissions are relatively small, but due to the large number of sources, the collective emissions could be significant. North Carolina estimated the stationary area source emissions by multiplying an emission factor by some known indicator of collective activity (such as fuel usage, number of households, or population). For on-road mobile source emissions, NC DENR used EPA's Motor Vehicle Emission Simulator (MOVES) model version 2010a (MOVES2010a), released in August 2010, for estimating vehicle emissions.

Nonroad mobile sources are pieces of equipment that can move but do not use roadways (e.g. lawn mowers, construction equipment, railroad locomotives, and aircraft). The emissions from this category are calculated at the county level using EPA's NONROAD2008s nonroad mobile model, with the exception of railroad locomotives and aircraft engines. The railroad locomotives and aircraft engines are estimated by taking an activity and multiplying by an emission factor.

Table 1 displays the 2010 attainment year emissions inventory as required for the limited maintenance plans. Appendix B of North Carolina's SIP submittal provides detailed discussions regarding the development of emissions for the four emission source classifications, and is provided in the docket for today's rulemaking.

TABLE 1—2010 CO EMISSIONS (TONS/DAY) FOR MAINTENANCE AREAS

County	Point source	Area source	On-Road	Nonroad	Total
Raleigh-Durham Maintenance Area					
Durham	0.97	1.54	186.00	19.04	207.55
Wake	1.17	4.26	642.97	70.62	719.02
Total	2.14	5.80	828.97	89.66	926.57
Winston-Salem Maintenance Area					
Forsyth	2.22	1.41	244.16	23.97	271.76
Charlotte Maintenance Area					
Mecklenburg	2.39	4.21	724.39	114.71	845.70

2. Maintenance Demonstration

In the October 6, 1995, Memorandum, EPA stated that the maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data shows that the area is meeting the air quality criteria for limited maintenance areas (i.e., 85 percent of the eight hour CO NAAQS, or 7.65 parts per million (ppm)). EPA determined in this same memorandum that there is no requirement to protect emissions over the maintenance period. Instead, EPA believes that if the area begins the maintenance period at, or below, 7.65 ppm (85 percent of the 8-hour CO NAAQS), the applicability of prevention of significant deterioration requirements, control measures already in the SIP, and other federal measures should provide adequate assurance of maintenance throughout the maintenance period. Monitoring data from 2008–2011 shows all three areas below the 8-hour CO NAAQS values. See Table 2 below. All monitoring levels are well below the 85 percent threshold of 7.65 ppm and therefore the State has satisfied the maintenance demonstration requirement for a limited maintenance plan for each of its CO maintenance areas.

TABLE 2—CO 8-HOUR MONITORED CONCENTRATION DESIGN VALUES

[ppm]

County	Monitor ID	2009	2010	2011	8-Hr NAAQS
Raleigh-Durham Maintenance Area					
Wake	371830014	[2]1.3	1.3	1.4	9

[2] The Direct Final Rulemaking on February 22, 2013, listed the Wake County 2009 design value as 1.3 ppm. *See* 78 FR 12238. The value reported by the State was actually 1.2 ppm and the change is reflected in this final rulemaking.

TABLE 2—CO 8-HOUR MONITORED CONCENTRATION DESIGN VALUES—Continued

[ppm]

County	Monitor ID	2009	2010	2011	8-Hr NAAQS
Winston-Salem Maintenance Area					
Forsyth	370670023	1.7	1.9	2.1	9
Charlotte Maintenance Area					
Mecklenburg	371190041	1.7	1.7	1.5	9

3. Monitoring Network and Verification of Continued Attainment

Once an area has been redesignated, the state should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. This is particularly important for areas using a limited maintenance plan because there will be no cap on emissions. In accordance with 40 CFR part 58, NC DENR commits to continue monitoring CO at the existing regulatory monitors in the three CO maintenance areas to ensure that CO concentrations remain well below the 7.65 ppm threshold for limited maintenance plans. The State's monitoring plan for 2012 can be found at the following site: *http://www.ncair.org/monitor/monitoring_plan/new_plan/2012_NCDAQ_Network_Plan.pdf.* EPA has determined that the State has satisfied the monitoring network and verification of continued attainment requirements for the limited maintenance plans.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of an area. The October 6, 1995, Memorandum further requires that the contingency provisions identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the state.

In its August 2, 2012, submittal, NC DENR committed to the same contingency measures that EPA previously approved on March 24, 2006 (71 FR 14817) and a subsequent clarification on June 19, 2007 (72 FR 33692). The State pre-adopted an oxygenated fuels program with minimum oxygen content by weight of 2.7 for Charlotte, Raleigh-Durham, and Winston-Salem maintenance areas as a contingency measure for the CO maintenance plan. The oxygenated fuel program is required under the CAA for the Raleigh-Durham and Winston-Salem areas as a required control measure prior to the attainment redesignation. Charlotte was placed under the oxygenated fuel program for effective area-wide CO emission reduction and to ease State implementation efforts. The contingency measure triggering date will be no more than 60 days after an ambient air quality violation is monitored. NC DENR will commence an analysis and regulation development process during this time. The State will consider the following control measures:

a. Amending the oxygenated fuels program by adopting oxygenate content of 2.0 percent to 2.7 percent by weight, or activate of the 2.7 percent by eight pre-adopted contingency measure, or 2.7 percent to 3.1 percent by weight;

b. expanding coverage of oxygenated fuels to include counties where a strong commuting pattern into the core maintenance area exists;

c. alternative fuel vehicle programs to include compressed natural gas and electric vehicles; and,

d. employee commute options programs.

NC DENR committed to implement at least one of the control measures within 24 months of the trigger, or as expeditiously as practicable. EPA has determined that the State has satisfied the contingency plan requirements pursuant to section 175A(d) of the CAA as well as those of the October 6, 1995, Memorandum.

5. Conformity Determination Under the Limited Maintenance Plan

The transportation conformity rule of November 24, 1993 (58 FR 62188), and the general conformity rule of November 30, 1993 (58 FR 63214), apply to nonattainment areas and maintenance areas operating under the maintenance plans. Under either rule, one means of demonstrating conformity of federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area.

EPA's October 6, 1995, Memorandum states that emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, EPA concluded that, for these areas, emissions need not be capped for the maintenance period.

In accordance with the transportation conformity rule, approval of a limited maintenance plan only removes the requirement to conduct a regional emissions analysis as part of the conformity determination. The requirement to demonstrate conformity per the requirements in Table 1 of 40 CFR 93.109 still applies. Additionally, federally funded projects are still subject to project level transportation conformity analysis requirements. However, no regional modeling analysis would be required.

Transportation partners should note this approval of these limited maintenance plans in future transportation conformity determinations. Additionally, while the approvals of these limited maintenance plans waives the requirements for a regional emissions analysis for the CO NAAQS, as mentioned above, it does not waive other conformity requirements for the CO standard for the Charlotte, Raleigh-Durham and Winston-Salem areas, and it does not waive transportation conformity requirement for other pollutants/precursors for which these areas may be designated nonattainment or redesigned to attainment with a full maintenance plan.

II. Response to Comments

On February 22, 2013 (78 FR 12267), EPA published a direct final rule approving North Carolina's August 2, 2012, SIP submission for a limited maintenance plan update for CO, showing continued attainment of the 8-hour CO NAAQS for the Charlotte, Raleigh/Durham and Winston-Salem

Areas. EPA published an accompanying proposed approval in the event that comments were received such that the direct final rule needed to be withdrawn. Specifically, in the direct final rule, EPA stated that if adverse comments were received by March 25, 2013, the rule would be withdrawn and not take effect, but that the proposed rule would still remain in effect and that an additional public comment period would not be instituted if EPA could sufficiently address any comments received on the direct final rulemaking. On March 25, 2013, EPA received comments from a single commenter. The comments could be interpreted as adverse and, therefore, EPA withdrew the direct final rule. A summary of the comments received and EPA's response is provided below.

Comment: The commenter stated ''were studies conducted to establish the criteria for labeling as a maintenance area? Is there something geographic and standard about this area.''

Response: This comment is outside of the scope of today's action. Nonetheless, EPA notes that the process to designate a maintenance area under the CO NAAQS involves an evaluation of specific criteria to determine whether an area is in compliance or out of compliance with the CO NAAQS. If an area is determined to be out of compliance, EPA then determines an appropriate boundary for the area and designates the area as a ''nonattainment'' area. The designation process for CO areas was completed in the early 1990's. The Charlotte, Raleigh/Durham and Winston-Salem Areas were all designated as nonattainment for the CO NAAQS. Once an area is designated nonattainment, an area can be redesignated to ''attainment'' (i.e., meaning that the area is in compliance of the NAAQS), if it meets the criteria of section 107(d)(3)(E) of the CAA. All three of the North Carolina areas were redesignated to ''attainment'' for the CO NAAQS and are thus considered ''maintenance'' areas. *See* 59 FR 48399 and 60 FR 39258.

Comment: The commenter questioned whether the emissions parameters are ''constricting the water vapor potential'' and whether the emissions tolerances are ''excessive considering most dealerships are manufacturing cars that use alternative energies and have done so for approximately 10 years now[?]''

Response: The on-road mobile source emissions inventory in North Carolina's limited maintenance plans for the Charlotte, Raleigh/Durham and Winston-Salem Areas were developed according to EPA guidelines and with the MOVES emissions model. The MOVES model can be used to estimate exhaust and evaporative emissions as well as brake and tire wear emissions from all types of on-road vehicles. The MOVES model incorporates substantial new emissions test data and accounts for changes in vehicle technology and regulations as well as improved understanding of in-use emission levels and the factors that influence them. NC DENR appropriately utilized the MOVES model to estimate the on-road mobile source emissions for the limited maintenance plan for all applicable vehicles and technologies, for the Charlotte, Raleigh/Durham and Winston-Salem Areas.

III. Final Action

EPA is approving the aforementioned changes to the State of North Carolina SIP, because they are consistent with the CAA, and EPA's policy related to limited maintenance plans.

IV. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file any comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to

enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: June 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(e) is amended by adding a new entry for ''8-Hour Carbon Monoxide Limited Maintenance Plan for Charlotte, Raleigh/Durham and Winston-Salem Maintenance Area'' at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
* * *	*	*	*	*
8-Hour Carbon Monoxide Limited Maintenance Plan for Charlotte, Raleigh/Durham and Winston-Salem Maintenance Area.	August 2, 2012	6/20/2013	[Insert citation of publication]	

[FR Doc. 2013–14507 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0274; FRL–9825–1]

Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: *Effective Date:* This rule is effective on July 22, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2013–0274. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, or by email at *wieber.kirk@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under CAA section 110(a)(1), states are required to submit plans called state implementation plans (SIPs) that provide for the implementation, maintenance and enforcement of each NAAQS and are referred to as infrastructure SIPs. 42 U.S.C. 7410(a)(1). On July 18, 1997, EPA promulgated new and revised NAAQS for 8-hour ozone (62 FR 38856) and $PM_{2.5}$ (62 FR 38652). EPA strengthened the 24-hour $PM_{2.5}$ NAAQS on October 17, 2006 (71 FR 61144). The 14 elements required to be addressed in infrastructure SIPs are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees; and (14) consultation/participation by affected local entities.

EPA is acting on three New York SIP submittals, dated December 13, 2007, October 2, 2008 and March 15, 2010, which address the section 110 infrastructure requirements for the three NAAQS: The 1997 8-hour ozone NAAQS, the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 2006 24-hour $PM_{2.5}$ NAAQS. This action does not address the requirements of section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS, since they were addressed in previous rulemakings. See January 24, 2008 (73 FR 4109). Additionally, this action does not address the requirements of section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS, which also was addressed in a previous EPA rulemaking. See July 20, 2011 (76 FR 43153). Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to

section 172. See 77 FR 46352, 46354 (August 3, 2012) (footnote 3); 77 FR 60307, 60308 (October 3, 2012) (footnote 1). These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the above infrastructure elements related to section 110(a)(2)(C) or 110(a)(2)(I).

EPA proposed action on the three SIP revisions on April 30, 2013 (78 FR 25236) and no comments were received on the proposal. The reader is referred to the April 30, 2013 proposed rulemaking for a detailed discussion of New York's submittals and EPA's review and proposed actions.

In a letter dated May 23, 2013, New York made a supplemental submittal that addresses the following 110(a)(2) sub-elements: E(ii) (conflict of interest provisions) and E(iii) (delegations).

II. What action is EPA taking?

EPA is approving New York's submittals as fully meeting the infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS for the following section 110(a)(2) elements and sub-elements: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E)(i), (F), (G), (H), (J), (K), (L), and (M). With this approval action, EPA's action on October 22, 2008 (73 FR 62902) for New York has been satisfied.

New York made a supplemental submittal on May 23, 2013 which corrects the deficiencies, relevant to sub-elements E(ii) and E(iii), that were identified in the April 30, 2013 proposed rulemaking action. New York's supplemental submittal includes: New York Public Officer's Law (POL) section 73–a, ''Financial disclosure;'' Title 19 of the New York Codes of Rules and Regulations (19 NYCRR) Part 937, ''Access To Publicly Available Records;'' a list identifying entities that received delegated responsibilities for implementing and enforcing portions of the New York SIP; and, a copy of the ''delegation order.'' On April 30, 2013, EPA proposed to conditionally approve New York's infrastructure SIP in fulfilling the requirements of section 110(a)(2)(E)(ii) and E(iii) for 1997 8-hour ozone and $PM_{2.5}$ NAAQS, provided the State committed to submit: POL section 73–a and 19 NYCRR Part 937 for approval as part of the SIP; a list of the county or local governments or entities that have been delegated responsibilities to implement or enforce portions of the SIP; and, copies of the delegation orders or memoranda of understanding between the State and the county or local governments or entities. However, EPA also proposed in the April 30, 2013 action, that in the alternative, should New York submit the required information before we take final rulemaking action, EPA will fully approve section 110(a)(2)(E)(ii) and E(iii). Therefore, since New York submitted the required information, EPA is approving New York's submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS for the following 110(a)(2) sub-elements: E(ii) (state boards and conflict of interest provisions) and E(iii) (delegations). EPA is also approving POL section 73–a (2)(a)(i) and (ii) and 19 NYCRR Subpart 937.1(a) into the New York SIP for the limited purpose of satisfying Clean Air Act Section 128(a)(2).

III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

requirements, Volatile organic compounds.

Dated: June 5, 2013.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by:

■ a. Adding a new heading for Title 19 and a new entry for ''Part 937, Access to Publicly Available Records'' to the table in paragraph (c) before the heading for ''Environmental Conservation Law;''

■ b. Adding a new heading for ''Public Officers Law'' and a new entry for ''Section 73–a, Financial Disclosure'' to the table in paragraph (c) after the entry for ''Section 19–0325;'' and,

■ c. Adding a new entry at the end of the table in paragraph (e).

The additions read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

New York State regulation	State effective date	Latest EPA approval date	Comments
* *	*	* *	* *
Title 19			
Part 937, ''Access To Publicly Available Records''.	8/27/12	6/20/13 [Insert FR page citation]	Only subpart 937.1(a) is approved into the SIP and is for the limited purpose of satisfying Clean Air Act Section 128(a)(2).
* *	*	* *	* *
Public Officers Law			
Section 73–a, ''Financial disclosure''	8/15/11	6/20/13 [Insert FR page citation]	Only subsections 73–a (2)(a)(i) and (ii) are approved into the SIP and are for the limited purpose of satisfying Clean Air Act Section 128(a)(2).

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI–REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
*	* *	*	* *	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.	Statewide	12/13/07, 10/2/08, 3/15/10 and supplemented on 5/23/13.	6/20/13 [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2013–14626 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0494, FRL–9802–7]

Approval and Promulgation of Implementation Plans; Oregon: Heat Smart Program and Enforcement Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to Oregon's State Implementation Plan (SIP) submitted to the EPA by the State of Oregon on October 5, 2011, June 8, 2012, and November 28, 2012. The submitted revisions relate to Oregon's Heat Smart program, rules for enforcement procedures and civil penalties, and contain minor revisions and clarifications to general air pollution definitions, rules for stationary source notification requirements, and requirements for fuel burning. The EPA is approving these SIP revisions because the revisions meet the requirements of the Clean Air Act.

DATES: This final rule is effective on July 22, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2012–0494. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, it is intended to refer to the EPA.

Table of Contents

I. Background
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On October 5, 2011, June 8, 2012, and November 28, 2012, the State of Oregon submitted revisions to the EPA for approval into the Oregon SIP. The submitted revisions relate to Oregon's Heat Smart program in Oregon Administrative Rules (OAR) Chapter 340, Division 262 (OAR 340–262), the enforcement procedures and civil penalties rules (OAR 340–012), and contain minor revisions and clarifications to general air pollution definitions (OAR 340–200), rules for stationary source notification requirements (OAR 340–210), and requirements for fuel burning (OAR 340–228). In a proposed rule published on February 11, 2013 (78 FR 9651), the EPA proposed to approve these revisions to the Oregon SIP. An explanation of the Clean Air Act (CAA) requirements and implementing regulations related to these SIP revisions and the EPA's reasons for approving the SIP revisions were provided in the notice of proposed rulemaking on February 11, 2013, and will not be restated here. The public comment period for this proposed rule ended on March 13, 2013.

II. Response to Comments

The EPA received two comments on the proposed rule. The first commenter requested clarification on the scope of the definition of solid fuel burning devices at OAR 340–262–0450. Specifically, the commenter requested and received confirmation from the EPA that barbeques and campfires were not included in the definition of solid fuel burning devices at OAR–340–262–0450. The second commenter supported the approval of the Oregon Heat Smart program rules and their contribution to reduced emissions and improved air quality. We agree with this comment and no response was necessary. Both comments are available in the docket.

III. Final Action

The EPA is approving the October 5, 2011, June 8, 2012, and November 28, 2012 SIP submittals from the State of Oregon as meeting the requirements of the CAA. Specifically, the EPA is approving revisions to OAR 340–012, OAR 340–200, OAR 340–210, OAR 340–228 and OAR 340–262 because the revisions are consistent with CAA requirements. In addition, the EPA approves the removal from the SIP of the regulations previously codified at OAR 340–262–0010 to OAR 340–262–0330 because the citations for these regulations have been renumbered.

With regard to OAR 340–012, the EPA is approving the revisions to OAR 340–012, subject to the following qualifications. The EPA's authority to approve SIP revisions extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of Section 110 of the CAA. Therefore, the EPA is approving the revisions to OAR 340–012 only to the extent they relate to enforcement of requirements contained in the Federally-approved Oregon SIP. Additionally, the EPA is not incorporating these rules by reference into the Code of Federal Regulations because the EPA relies on its own independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

The submittals contain an amendment to OAR 340–200–0040, which describes the State's procedures for adopting its Clean Air Act Implementation Plan and references all of the state air regulations that have been adopted by the Environmental Quality Commission for approval into the SIP (as a matter of state law), whether or not they have yet been submitted to or approved by the EPA. We are proposing no action on the revisions to OAR 340–200–0040 in the SIP submittal because it is unnecessary to take action on a provision addressing State SIP adoption procedures and because the Federally-approved SIP consists only of regulations and other requirements that have been submitted by ODEQ and approved by the EPA.

IV. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: April 3, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraphs (c)(139)(i)(D) and (E), (c)(153)(i)(H) and (I), and (c)(157) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(139) * * *

(i) * * *

(D) Based on a SIP revision submitted by Oregon on October 5, 2011, Oregon Administrative Rules Chapter 340, Division 262 ''Residential Woodheating,'' as effective October 14, 1999, the following provisions are removed from the SIP: 262–0010, 262–0020, 262–0030, 262–0040, 262–0100, 262–0110, 262–0120, 262–0130, 262–0200, 262–0210, 262–0220, 262–0230, 262–0240, 262–0250, 262–0300, 262–0310, 262–0320, 262–0330.

(E) Based on a SIP revision submitted by Oregon on June 8, 2012, Oregon Administrative Rules Chapter 340, Division 210 ''Stationary Source Notification Requirements,'' as effective October 8, 2002, the following provisions are removed from the SIP and replaced by revised provisions effective May 17, 2012: 210–0100, 210–0110, 210–0120, 210–0250.

* * * * *

(153) * * *

(i) * * *

(H) Based on a SIP revision submitted by Oregon on June 8, 2012, Oregon Administrative Rules Chapter 340, Division 200 ''General Air Pollution Procedures and Definitions,'' the following provision 340–200–0020, as effective May 1, 2011, is removed from the SIP and replaced by revised provision 340–200–0020 as effective May 17, 2012.

(I) Based on a SIP revision submitted by Oregon on June 8, 2012, Oregon Administrative Rules Chapter 340, Division 228 ''Requirements for Fuel Burning Equipment and Fuel Sulfur Content,'' the following provisions 228–0020, 228–0200, 228–0210, as effective November 8, 2007, are removed from the SIP and replaced by revised provisions 228–0020, 228–0200, 228–0210, as effective May 17, 2012.

* * * * *

(157) On October 5, 2011, June 8, 2012, and November 28, 2012, the Oregon Department of Environmental Quality submitted revisions to the Oregon Administrative Rules (OAR) Chapter 340 as revisions to the Oregon State Implementation Plan (SIP). The submissions relate to Oregon's Heat Smart program, enforcement procedures and civil penalties, general air pollution definitions, rules for stationary source notification requirements, and requirements for fuel burning.

(i) Incorporation by reference.

(A) The following sections of the OAR Chapter 340, Division 262, effective March 15, 2011: Division 262, Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices: Rule 0400 Purpose and Applicability of Rules; Rule 0500 Certification of Solid Fuel Burning Devices for Sale as New; Rule 0700 Removal and Destruction of Used Solid Fuel Burning Devices; Rule 0800 Wood Burning and Other Heating Devices Curtailment Program; Rule 0900 Materials Prohibited from Burning.

(B) The following sections of the OAR Chapter 340, Division 262, effective May 17, 2012: Division 262, Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices: Rule 0450 Definitions; Rule 0600 New and Used Solid Fuel Burning Devices Sold in Oregon.

(ii) Additional Material:

(A) The following revised sections of Oregon Administrative Rules Chapter 340, effective November 10, 2008: Division 12 Enforcement Procedures and Civil Penalties: Rule 0030 Definitions, Rule 0038 Warning Letters, Pre-Enforcement Notices and Notices of Permit Violation, Rule 0155 Additional or Alternate Civil Penalties, Rule 0170 Compromise or Settlement of Civil Penalty by Department.

(B) The following revised sections of Oregon Administrative Rules Chapter 340, effective March 15, 2011: Division 12 Enforcement Procedures and Civil Penalties: Rule 0054 Air Quality Classifications and Violations, Rule 0140 Determination of Base Penalty.

[FR Doc. 2013–14501 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2013–0233; FRL–9825–6]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of four Kansas State Implementation Plan (SIP) submissions. EPA is approving portions of two SIP submissions addressing the applicable infrastructure requirements of the Clean Air Act (CAA) for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS) for fine particulate matter ($PM_{2.5}$). These infrastructure requirements are designed to ensure that the structural components

of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also taking final action to approve two additional SIP submissions from Kansas, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas, and another addressing the requirements applicable to any board or body which approves permits or enforcement orders of the CAA, both of which support requirements associated with infrastructure SIPs. The rationale for this action is explained in this notice and in more detail in the notice of proposed rulemaking for this action, which was published on April 17, 2013.

DATES: This rule will be effective July 22, 2013.

ADDRESSES: EPA has established docket number EPA–R07–OAR–2013–0233 for this action. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7214; *fax number:* (913) 551–7065; *email address: kemp.lachala@epa.gov*.

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

I. Background and Purpose
II. EPA's Response to Comment
III. Summary of EPA Final Action
IV. Statutory and Executive Order Review

I. Background and Purpose

On April 17, 2013, EPA proposed to approve four Kansas SIP submissions (78 FR 22827). EPA received the first submission on January 8, 2008, addressing the infrastructure SIP requirements relating to the 1997 $PM_{2.5}$ NAAQS. EPA received the second submission on April 12, 2010, addressing the infrastructure SIP requirements relating to the 2006 $PM_{2.5}$ NAAQS. As originally detailed in the proposed rulemaking, EPA had previously approved section 110(a)(2)(D)(i)(I) and (II)—Interstate and international transport requirements of Kansas' January 8, 2008, SIP submission for the 1997 $PM_{2.5}$ NAAQS (72 FR 10606, May 8, 2007); and EPA disapproved section 110(a)(2)(D)(i)(I)—Interstate and international transport requirements of Kansas' April 12, 2010, SIP submission for the 2006 $PM_{2.5}$ NAAQS (76 FR 43143, July 20, 2011). Therefore, we did not propose to act on those portions in the April 17, 2013, proposed rule since they had already been acted upon by EPA. With this final action, we will have acted on both the January 8, 2008, and the April 10, 2010, submissions in their entirety, excluding those provisions that are not within the scope of today's rulemaking as identified in section IV of the April 17, 2013, proposed action for both the 1997 and 2006 $PM_{2.5}$ infrastructure SIP submissions.

The third submission was received by EPA on March 1, 2013. This submission revises the Kansas rule found at Kansas Administrative Regulations (KAR) 29–19–350 ''Prevention of Significant Deterioration of Air Quality'' to incorporate by reference Federal rule changes through July 1, 2011. These changes implement elements of the Prevention of Significant Deterioration (PSD) regulations relating to EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (73 FR 28321, May 16, 2008) and certain elements of the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' rule (75 FR 64864, October 20, 2010). On April 2, 2013, Kansas amended and clarified its submission so that it no longer included specific provisions affected by the January 22, 2013, U.S. Court of Appeals for the District of Columbia court decision which vacated and remanded the provisions concerning implementation of the $PM_{2.5}$ SILs and vacated the provisions adding the $PM_{2.5}$ SMC that were promulgated as part of the October 20, 2010, $PM_{2.5}$ PSD Rule (*Sierra Club* v. *EPA,* No. 10–1413 (filed December 17, 2010)). In addition, this rule amendment defers the application of PSD permitting requirements to carbon dioxide emissions from bioenergy and other biogenic stationary sources.

The fourth submission was received by EPA on March 19, 2013. This submission addresses the conflict of interest provisions in section 128 of the CAA as it relates to element E of the infrastructure SIP. In the proposed rulemaking, EPA proposed to ''parallel process'' the SIP revision relating to these conflict of interest provisions. Under this procedure, EPA proposed rulemaking action concurrently with the State of Kansas' procedures for approving a SIP submission and amending its regulations. Because Kansas did not receive any comments during its public comment period and therefore the regulation revision adopted by Kansas is identical to the draft regulation which EPA described in the proposal, in today's action EPA is finalizing approval of the conflict of interest provisions.

In summary, EPA is taking final action today to approve these four SIP submissions from Kansas. The first two submissions address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 1997 and 2006 NAAQS for $PM_{2.5}$. With this final action, we will have acted on both the 1997 and 2006 submissions in their entirety excluding those provisions that are not within the scope of the rulemaking. EPA is also taking final action to approve two additional SIP submissions from Kansas, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas as it relates to $PM_{2.5}$, unless otherwise noted in EPA's proposed action on April 17, 2013 (78 FR 22827), and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure SIPs.

The public comment period on EPA's proposed rule opened April 17, 2013, the date of its publication in the **Federal Register**, and closed on May 17, 2013. During this period, EPA received one comment from a citizen, and one from the Kansas Department of Health and Environment (KDHE). The letters are available in the docket to today's final rule. The citizen comment was in support of EPA's action, and we appreciate the support for this rulemaking. No changes were made to this final action based on this comment. Today's final action includes EPA's response to KDHE's comment.

II. EPA's Response to Comment

Comment: KDHE commented that EPA retract certain language in the proposed rulemaking for today's final

action. The proposed rulemaking stated at 78 FR 22838: ''As described under element C in section V of this rulemaking, states had an obligation to address condensable PM emissions as a part of the 2008 $PM_{2.5}$ NSR implementation rule. In Kansas' March 1, 2013, SIP submission, Kansas incorporated by reference EPA's definition for regulated NSR pollutant (formerly at 40 CFR 51.166(b)(49)(vi)), including the term 'particulate matter emissions,' as inadvertently promulgated in the 2008 NSR Rule. EPA is, however, proposing to approve into the Kansas SIP the requirement that condensable PM be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} because it is more stringent than the Federal requirement. Kansas can choose to initiate further rulemaking to ensure consistency with Federal requirements.'' KDHE contends that its March 1, 2013, PSD SIP submission was intended to align the state's PSD rules with the Federal rules and therefore is not more stringent than Federal requirements.

Response: After evaluating KDHE's comment, EPA agrees that KDHE's March 1, 2013, submission did not include provisions that are more stringent than the Federal requirements.

III. Summary of EPA Final Action

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the infrastructure to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 1997 and 2006 $PM_{2.5}$ NAAQS are implemented in the state. Therefore, EPA is taking final action to approve Kansas' infrastructure SIP submissions for the 1997 and 2006 NAAQS for $PM_{2.5}$ for the following section 110(a)(2) elements and sub-elements: (A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In addition, EPA is approving two SIP submissions, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas as it relates to $PM_{2.5}$, and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure SIPs.

IV. Statutory and Executive Order Review

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

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2013.

Mark Hague,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart R—Kansas

■ 2. In § 52.870:

■ a. The table in paragraph (c) is amended by revising the entry for 28–19–350.

■ b. The table in paragraph (e) is amended by adding new entries (34), (35), and (36) in numerical order at the end of the table.

The revisions and additions read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
*	*	*	*	*
Construction Permits and Approvals				
*	*	*	*	*
28–19–350	Prevention of Significant Deterioration (PSD) of Air Quality.	12/28/2012	6–20–13 ..... *INSERT* FEDERAL REGISTER *PAGE NUMBER WHERE THE DOCUMENT BEGINS*].	Provisions of the 2010 $PM_{2.5}$ PSD—Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved. Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. In addition, we have not approved Kansas rule incorporating EPA's 2007 revision of the definition of "chemical processing plants" (the "Ethanol Rule," 72 FR 24060 (May 1, 2007) or EPA's 2008 "fugitive emissions rule," 73 FR 77882 (December 19, 2008).
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic area or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(34) Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	1/08/2008	6–20–13 *INSERT CITATION OF PUBLICATION*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except as noted.
(35) Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	4/12/2010	6–20–13 [*INSERT CITATION OF PUBLICATION*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except as noted.
(36) Section 128 Declaration: Kansas Department of Health and Environment Representation and Conflicts of Interest Provisions, Kansas Revised Statutes (KSA). KSA 46–221, KSA 46–229, KSA 46–247(c).	Statewide	3/19/2013	6–20–13 [*INSERT CITATION OF PUBLICATION*].	

[FR Doc. 2013–14627 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0362; FRL–9815–5]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the San Diego Air Pollution Control District (SDAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from architectural coatings. We are approving a local rule that regulates this emission source under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on August 19, 2013 without further notice, unless EPA receives adverse comments by July 22, 2013. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0362, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SDAPCD	67.0	Architectural Coatings	12/12/01	03/07/08

On April 17, 2008, EPA determined that the submittal for SDAPCD Rule 67.0 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 67.0 into the SIP on March 27, 1997 (62 FR 14639). The SDAPCD adopted revisions to the SIP-approved version on December 12, 2001 and CARB submitted them to us on March 7, 2008. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. SDAPCD Rule 67.0 adds several new coating categories and lowers existing VOC limits. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each VOC major stationary source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2)), and must not relax existing requirements (see sections 110(l) and 193). Because SDAPCD Rule 67.0 covers an area source and not a stationary source and does not have a CTG, it does not need to require RACT controls.

Guidance and policy documents that we use to evaluate enforceability and stringency requirements consistently include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Suggested Control Measure for Architectural Coatings,'' CARB, October 2007.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, stringency, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 22, 2013, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 19, 2013. This will incorporate the rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: May 6, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(354)(i)(F)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(F) * * *

(*3*) Rule 67.0, ''Architectural Coatings,'' adopted on December 12, 2001.

* * * * *

[FR Doc. 2013–14511 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0385; FRL–9824–2]

Approval and Promulgation of Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Florida; Approval of Recodification of the Florida Administrative Code; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: On June 16, 1999, EPA published a final rule in the **Federal Register** approving a Florida State Implementation Plan (SIP) revision, submitted through the Florida Department of Environmental Protection (FDEP) on April 15, 1996. The submission related to miscellaneous changes and the recodification of the Florida Administrative Code (F.A.C.). In addition, the submittal also contained several regulations that were supposed to be removed from the SIP. EPA's June 16, 1999, action approved the miscellaneous rule revisions, repeals and corrections; however, it failed to ensure the regulatory text reflected all of the repeals. This correcting amendment corrects and clarifies errors in the regulatory language in paragraph (c) of EPA's June 16, 1999, final rule.

DATES: Effective on June 20, 2013.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's action corrects inadvertent errors in EPA's June 16, 1999, final rulemaking. Specifically, this correcting amendment clarifies that EPA's June 16, 1999, action approved the State's implementation plan revision that repealed F.A.C. rules 62–297.411 (DEP Method 1), 62–297.412 (DEP Method 2), 62–297.413 (DEP Method 3), 62–297.415 (DEP Method 5), 62–297.416 (DEP Method 5A), 62–297.417 (DEP Method 6) and, 62–297.423 (EPA Method 12-Determination of Inorganic Lead Emissions from Stationary Emission Units). The June 16, 1999, final rule approved the removal of the test method rules from the SIP. These rules were repealed because they were obsolete. Another rule change provided for the incorporation of the federally approved American Society for Testing and Materials (ASTM) methods. However, EPA's regulatory text did not properly indicate that the rules were repealed. This action corrects these inadvertent errors.

EPA has determined that today's actions fall under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because today's action to correct inadvertent regulatory text errors included with EPA's June 16, 1999, final rule are consistent with the substantive revisions to the Florida SIP described in the direct final rule addressing the miscellaneous revisions and the recodification of F.A.C. to make the SIP less complex and correct typographical errors. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of EPA's analysis or action addressing the recodification and miscellaneous revisions to the Florida SIP. EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action merely corrects inadvertent errors in the regulatory text of EPA's prior rulemaking for the Florida SIP. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely corrects an inadvertent omission in the regulatory text of EPA's June 16, 1999, final rule addressing the recodification of the Florida SIP, and miscellaneous changes and imposes no additional requirements beyond those already imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an inadvertent omission in the regulatory text of EPA's June 16, 1999, final rules addressing miscellaneous revisions and the recodification of F.A.C. to make the SIP less complex and to correct typographical errors, and does not impose any additional enforceable duty beyond that already required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This rule merely corrects inadvertent errors in the regulatory text of EPA's June 16, 1999, final rule by removing certain repealed rules from the regulatory text, and does

not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

List of Subjects in 40 CFR Part 52

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

Dated: June 3, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is corrected by making the following correcting amendments:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

§ 52.520 [Amended]

■ 2. Section 52.520(c) is amended under Chapter 62–297 by removing the entries for ''62–297.411'', ''62–297.412'', ''62–297.413'', ''62–297.415'', ''62–297.416'', ''62–297.417'' and ''62–297.423''.

[FR Doc. 2013–14509 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0146; FRL–9751–4]

RIN 2060–AP84

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants for heat exchange systems at petroleum refineries. The amendments address issues raised in a petition for reconsideration of the EPA's final rule setting maximum achievable control technology rules for these systems and also provides additional clarity and regulatory flexibility with regard to that rule. This action does not change the level of environmental protection provided under those standards. The final amendments do not add any new cost burdens to the refining industry and may result in cost savings by establishing an additional monitoring option that sources may use in lieu of the monitoring provided in the original standard.

DATES: The final amendments are effective on June 20, 2013. The incorporation by reference of certain publications listed in the final rule amendments is approved by the Director of the Federal Register as of June 20, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0146. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Shine, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Refining and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–3608; fax number: (919) 541–0246; email address: *shine.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document?
- C. Judicial Review

II. Background Information
- A. Executive Summary
- B. Background of the Refinery NESHAP

III. Summary of the Final Amendments to NESHAP for Petroleum Refineries and Changes Since Proposal

IV. Summary of Comments and Responses
- A. Uniform Standards for Heat Exchange Systems
- B. Refinery MACT 1 Requirements for Heat Exchange Systems
- V. Summary of Impacts

VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act
- 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. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this final action include:

Category	NAICS [1] Code	Examples of regulated entities
Industry	324110	Petroleum refineries located at a major source that are subject to 40 CFR Part 63, subpart CC.

[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 final rule. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.640 of subpart CC (National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries). 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.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action is available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

The EPA has created a redline document comparing the existing regulatory text of 40 CFR Part 63, subpart CC and the final amendments to aid the public's ability to understand the changes to the regulatory text. This document has been placed in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2003–0146).

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by August 19, 2013. Under section 307(d)(7)(B) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background Information

A. Executive Summary

1. Purpose of the Regulatory Action

This action finalizes amendments that were proposed on January 6, 2012, to address reconsideration issues related to the maximum achievable control technology standards (MACT) for heat exchange systems we promulgated on October 28, 2009. This action also finalizes additional amendments intended to clarify rule provisions and to provide additional flexibility.

2. Summary of Major Provisions

We are finalizing three significant revisions to the standards for heat exchange systems that were promulgated on October 28, 2009. First, we are revising the regulations to include an alternative monitoring option for heat exchange systems that would allow owners and operators at existing sources to monitor quarterly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 parts per million by volume (ppmv); the current regulations (40 CFR 63.654) provide only one monitoring option, which requires monitoring monthly at a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv. We performed modeling of the monitoring alternative and the modeling indicates that quarterly monitoring at the lower leak action level provides equivalent emission reductions to monthly monitoring at the higher leak action level in the existing regulations. These amendments also include specific recordkeeping and reporting requirements for owners and operators electing to use the alternative monitoring frequency.

The second significant amendment is the revision to the definition of heat exchange system to improve clarity regarding applicability of the monitoring and repair provisions for individual heat exchangers within the heat exchange system.

The third significant revision is an amendment to the monitoring requirements for once-through cooling systems to allow monitoring at an aggregated location for once-through cooling water heat exchange systems, provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

These final amendments do not include the proposed cross-referencing of the Uniform Standards for Heat Exchange Systems (40 CFR Part 65, subpart L). These final amendments also do not include the use of direct water sampling methods that were proposed as alternatives to using the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (Modified El Paso Method), Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003 (incorporated by reference—see § 63.14) within the Uniform Standards for Heat Exchange Systems. The EPA concluded that the alternative as proposed was not feasible for petroleum refineries and that alternatives suggested during the comment period were not equivalent.

3. Costs and Benefits

The actions we are taking will have no cost, environmental, energy or economic impacts beyond those impacts presented in the October 2009 final rule for heat exchange systems at petroleum

refineries and may result in a cost savings for refiners who select the proposed alternative monitoring frequency. For sources that choose the quarterly monitoring alternative, the cost is projected to be less than the cost of the monthly monitoring requirement in the October 2009 final rule, while achieving the same environmental impacts. Similarly, sources that choose to monitor at an aggregated location, for the small number of refineries that operate once-through systems, will have reduced monitoring costs. The clarifications and other changes we are proposing in response to reconsideration are cost-neutral.

B. Background of the Refinery NESHAP

Section 112 of the CAA establishes a regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. After the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate national emission standards for hazardous air pollutants (NESHAP) for those sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts) and are commonly referred to as MACT standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements. See CAA section 112(d)(3). Specifically, for new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts and energy requirements.

We published the first set of MACT standards for petroleum refineries (40 CFR Part 63, subpart CC) on August 18, 1995 (60 FR 43620). These standards are commonly referred to as the ''Refinery MACT 1'' standards because certain process vents were excluded from this source category and subsequently regulated under a second MACT standard specific to these petroleum refinery process vents (40 CFR Part 63, subpart UUU, referred to as ''Refinery MACT 2'').

We issued an initial proposed rule to include requirements for heat exchange systems for the petroleum refineries subject to the Refinery MACT 1 on September 4, 2007, and held a public hearing in Houston, Texas, on November 27, 2007. In response to public comments on the initial proposal, we collected additional information and revised our analysis of the MACT floor. Based on the results of these additional analyses, we issued a supplemental proposal on November 10, 2008, that proposed a new MACT floor for heat exchange systems. A public hearing for the supplemental proposal was held in Research Triangle Park, North Carolina, on November 25, 2008. We took final action to establish standards for heat exchange systems in the Refinery MACT 1 standards (40 CFR Part 63, subpart CC) on October 28, 2009.

On December 23, 2009, the American Petroleum Institute (API) requested an administrative reconsideration under CAA section 307(d)(7)(B) of certain provisions of 40 CFR Part 63, subpart CC that they had identified in an April 7, 2009, letter to the EPA. On January 6, 2012, we issued a proposed rule addressing the issues in the reconsideration petition and proposed amendments to 40 CFR Part 63, subpart CC. As part of the January 6, 2012, proposal, we also proposed Uniform Standards for Heat Exchange Systems (40 CFR Part 65, subpart L), which included the same substantive provisions for heat exchange systems that were in the October 2009 Refinery MACT 1 final standards (40 CFR Part 63, subpart CC). We proposed to remove from the Refinery MACT 1 standards most of the substantive provisions addressing heat exchange systems and to cross-reference the Uniform Standards from Refinery MACT 1.

III. Summary of Final Amendments to NESHAP for Petroleum Refineries and Changes Since Proposal

As described in section II.B. of this preamble, we proposed, on January 6, 2012, Uniform Standards for Heat Exchange Systems as 40 CFR Part 65, subpart L and amendments to Refinery MACT 1 (40 CFR Part 63, subpart CC). We are not finalizing the Uniform Standards for Heat Exchange Systems at this time because we are still evaluating comments received on the March 26, 2012, proposed Uniform Standards for storage vessels, equipment leaks and closed vent system and control devices (see 77 FR 17898). We believe it is appropriate to consider all the comments received on the Uniform Standards proposed rules together, particularly since some of the comments received on the March 26, 2012, proposal relate to the overall concept and implementation of Uniform Standards across multiple industry categories. We are retaining in Refinery MACT 1 the substantive requirements for heat exchange systems. However, we are revising Refinery MACT 1 to incorporate many of the substantive changes in the work practice standards for heat exchange systems at petroleum refineries included in the Uniform Standards as part of the January 6, 2012, proposal.

First, we are amending the definition of ''heat exchange system'' based on the proposed clarification of the definition and the public comments received. As proposed, we are replacing ''series of devices'' with ''collection of devices.'' In response to comments, we also are amending the definition of ''heat exchange system'' to improve clarity regarding the applicability of the monitoring and repair requirements for individual heat exchangers within the heat exchange system. Specifically, we are revising the definition of ''heat exchange system'' to focus on heat exchangers (and not sample coolers) that are in organic HAP service and that are associated with a petroleum refinery process unit. Therefore, we are finalizing the definition of ''heat exchange system'' to mean a device or collection of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the heat exchange system consists of a cooling tower, all petroleum refinery process unit heat exchangers that are in organic HAP service (as defined in this subpart) serviced by that cooling tower, and all water lines to and from these petroleum refinery process unit heat exchangers. For once-through systems, the heat exchange system consists of all heat

exchangers that are in organic HAP service (as defined in this subpart) servicing an individual petroleum refinery process unit and all water lines to and from these heat exchangers. Sample coolers or pump seal coolers are not considered heat exchangers for the purpose of this definition and are not part of the heat exchange system. Intentional direct contact with process fluids results in the formation of a wastewater.

In the January 2012 proposal, we included clarifications of the sampling requirements and leak action level for once-through heat exchange systems when determining strippable hydrocarbon concentrations for the inlet water stream. We are finalizing these clarifications as proposed. After considering public comments, we are also revising the sampling requirement for once-through systems to allow monitoring at an aggregated location for once-through heat exchange systems, provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

In the January 2012 proposal, we also proposed a direct water sampling and analysis option as an alternative to using the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (Modified El Paso Method), Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003 (incorporated by reference—see § 63.14), as well as amendments to the recordkeeping and reporting requirements when this alternative is elected. After considering public comments, we are not revising Refinery MACT 1 to include this alternative.

In the January 2012 proposal, we included an alternative monitoring frequency for heat exchange systems at existing sources. This monitoring frequency is quarterly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 ppmv; the only monitoring frequency in existing Refinery MACT 1 is monthly at a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv. We are revising Refinery MACT 1 to include the alternative monitoring frequency, as proposed.

We proposed a clarification that the water flow rate could be determined based on direct measurement, pump curves, heat balance calculations or other engineering methods. We are finalizing this clarification as proposed. We also proposed clarifications to the applicability dates for heat exchange systems at new sources. We are finalizing these clarifications as proposed.

The proposed Uniform Standards at 40 CFR 65.610(b) contained three exemptions: one based on pressure differential, one based on not being ''in regulated material service,'' and one based on size (targeted to exclude sample coolers). As previously noted, we are not finalizing the Uniform Standards or the cross-references to those Uniform Standards from Refinery MACT 1. The corresponding section in Refinery MACT 1 (40 CFR 63.654, Subpart CC) that we are finalizing in today's action contains only two exemptions: one based on pressure differential and one for intervening fluid. The exemptions for ''in HAP service'' and small heat exchangers are not needed based on the revised definition of ''heat exchange system.'' These heat exchangers are not part of the affected heat exchange system as that term is defined in these final amendments.

We are finalizing several technical and clarifying corrections in response to issues identified by public commenters. One of these amendments is in response to a commenter's request for clarity on how delay of repair emissions are to be calculated and for confirmation that the emissions should be estimated for the period of time that the delay of repair occurred. The October 2009 standards required the calculation of emissions projected for the ''expected duration of delay'' using the monitored leak concentration. As the heat exchange system for which repair is delayed must be monitored monthly, we interpret the rule to require a monthly estimate of the emissions projected for the duration of the delay of repair. However, the reporting requirement is an estimate of the emissions that occur as a result of delayed repairs over the reporting period. As such, the owner or operator must actually calculate the emissions projected over each monitoring interval and sum these estimates for the period covered by the semi-annual report. Therefore, in order to better align the calculation, recordkeeping and reporting requirements, we have revised the requirement to develop a monthly emission estimate for ''the duration of the expected delay of repair'' to require calculation of emissions projected for ''each monitoring interval.'' We also revised the recordkeeping requirements to keep records of these ''monitoring interval'' emission estimates, which can be directly used to develop the emission estimates required in the semi-annual reports. We are also clarifying that the delay begins on the date the leak would have had to be repaired had the repair not been delayed. We are revising the recordkeeping requirement for the ''identification of all heat exchangers at the facility'' to instead require records for ''identification of all petroleum refinery process unit heat exchangers at the facility'' commensurate with our revision of the definition of ''heat exchange system'' and our desire to focus the Refinery MACT 1 heat exchange system requirements on heat exchangers associated with petroleum refinery process units. Finally, we are specifying that records related to the heat exchanger provisions be retained for 5 years, consistent with retention requirements for other emissions sources.

Today's final rule also addresses 10 reconsideration issues raised by the API. The API requested an administrative reconsideration under CAA section 307(d)(7)(B) of certain provisions of 40 CFR part 63, subpart CC that they had identified in an April 7, 2009, letter to the EPA. As described in detail in the January 6, 2012, proposal (see 77 FR 964), we denied API's request for six of the reconsideration issues either because they were irrelevant after the subsequent withdrawal of the amendments to the Refinery MACT 1 storage vessel requirements or because the issues could have been raised during the public comment period. We granted reconsideration on the following issues: (1) The use of the promulgation date to describe the applicability for new sources in 40 CFR 63.640(h)(1); (2) the definition of ''heat exchange system'' in 40 CFR 63.641 as it relates to once-through heat exchange systems and refinery process units; (3) the monitoring procedures for once-through heat exchange systems in 40 CFR 63.654(c); and (4) the determination of the cooling water flow rate in 40 CFR 63.654(g). This final action reflects our reconsideration of issues raised in API's request for reconsideration.

IV. Summary of Comments and Responses

A. Uniform Standards for Heat Exchange Systems

On January 6, 2012, we proposed Uniform Standards for Heat Exchange Systems (40 CFR part 65, subpart L). We also proposed to remove most of the substantive requirements for heat exchange systems from Refinery MACT 1, to include them in the Uniform Standards, and to cross-reference the Uniform Standards from Refinery

MACT 1. We received numerous comments on the creation of Uniform Standards for Heat Exchange Systems and the proposed cross-referencing to the Uniform Standards within Refinery MACT 1 (40 CFR part 63, subpart CC). We are not taking final action to create Uniform Standards for Heat Exchange Systems at this time. We will address the comments that focused on the creation of the Uniform Standards in the context of future Uniform Standards regulatory actions. Section IV.B of this preamble addresses the comments regarding the substance of requirements that we proposed to include in the Uniform Standards but that we are now finalizing as part of Refinery MACT 1, or requirements proposed in the Uniform Standards that we have decided not to finalize as they would apply to heat exchange systems at refineries.

B. Refinery MACT 1 Requirements for Heat Exchange Systems

1. Definition of Heat Exchange System

Comment: One commenter supported the proposed change to the definition of ''heat exchange system'' that clarifies that heat exchangers need not be piped in series.

Response: We appreciate support of this clarification.

Comment: One commenter stated that including the cooling tower in the definition of ''heat exchange system'' means there can be only one heat exchange system per cooling tower, and this unduly complicates the rule (because the rule has to discuss requirements for individual exchangers and groups of exchangers as well as the heat exchange system). The commenter also suggested that the definition be limited to heat exchangers that serve petroleum refining process units to clarify that heat exchangers outside of the affected source are not subject to the Refinery MACT 1 requirements, which would be clearer than relying on the affected source description in 40 CFR 63.640 to limit applicability. Another commenter stated that monitoring provisions in 40 CFR 63.654(a) should focus on heat exchangers that service refinery process units because there is no legal basis for applying the rule to heat exchangers that service non-refinery processes even if they share a cooling tower.

Response: We disagree that including the cooling tower in the definition of heat exchange system creates confusion. Even if the cooling tower were not part of the heat exchange system, the regulatory language would still have to discuss heat exchangers, groups of heat exchangers and heat exchange systems to allow both centralized and separate monitoring of heat exchangers (or groups of heat exchangers). The flexibility provided in the monitoring locations, not the inclusion of the cooling tower, appears to be the primary source of complexity in the rule. As we allow monitoring of the cooling water at the cooling tower, it is logical that the cooling tower be part of the heat exchange system. Furthermore, the cooling tower is a central and essential part of a closed-loop heat exchange system for the system to operate properly. It is easily identifiable for permitting and enforcement personnel and it is the location at which most refineries are expected to perform the required monitoring. The cooling tower is also the location at which the strippable hydrocarbons are emitted.

With respect to limiting the definition to heat exchangers that serve petroleum refining process units, we find that this comment has merit. Because Refinery MACT 1 is a NESHAP, in this final action, we intentionally limited repairs to heat exchangers that are ''in organic HAP service.'' The rule as finalized in 2009 also limited applicability by defining as part of the affected source ''all heat exchange systems associated with refinery process units and which are in organic HAP service'' in 40 CFR 63.640(c)(8). While we expect most heat exchange systems at petroleum refineries to process cooling water from heat exchangers associated only with refinery process units, we recognize that there may be other process units at a refinery, particularly ethylene units and units subject to the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (40 CFR part 63, subpart F) (''HON'').

We generally prefer not to include applicability criteria in emission source definitions, but recognizing the complexity of the current construct, we considered whether revising the definition of heat exchange system might increase the clarity of the monitoring and repair requirements for specific heat exchangers within the heat exchange system. Specifically, we considered defining a closed-loop heat exchange system as ''a cooling tower, all petroleum refinery process unit heat exchangers serviced by that cooling tower that are in organic HAP service, as defined in this subpart, and all water lines to and from these petroleum refinery process unit heat exchangers.'' The qualifications in this definition provide clarity that the repair requirements in 40 CFR 63.654 apply only to refinery process unit heat exchangers that are in organic HAP service; other heat exchangers that might be serviced by a common cooling tower are not part of the ''heat exchange system.'' A similar revision for once-through systems would be ''all heat exchangers that are in organic HAP service, as defined in this subpart, servicing an individual petroleum refinery process unit and all water lines to and from these heat exchangers.'' Considering the broad definition of ''petroleum refinery process unit'' and the existing exclusions in 40 CFR 63.640(g), we are finalizing these revisions to the definition of heat exchange system because we believe that these revisions clarify the intent of the requirements within Refinery MACT 1 as finalized in October 2009 and limit the applicability of the repair requirements to individual heat exchangers servicing refinery process units.

Comment: Two commenters suggested that all sample coolers and pump seal coolers should be specifically exempted from the monitoring requirements and/or that the threshold in 40 CFR 65.610(b)(3) should be raised from 10 gallons per minute to 50 gallons per minute. The commenters stated that it was burdensome to have to evaluate the flow rate for every sample cooler at the refinery in order to assess the monitoring applicability and that sample coolers were not considered in the EPA analysis of heat exchange systems.

Response: In the January 2012 proposal, we included an exemption for very small heat exchange systems (those with water flow rates less than 10 gallons per minute). This exemption was specifically targeted to exempt sample coolers and pump seal coolers because we did not consider these coolers significant sources of emissions and did not include them in our MACT floor and impacts analysis for the October 2009 final rule. We considered providing a higher flow exclusion to individual heat exchangers, but this would still require the refinery owners and operators to identify and assess the flow rates of each sample cooler. After reviewing the options, we have concluded that adding language to specifically exclude sample coolers and pump seal coolers from the definition of heat exchange system provides the clearest means to ensure that the regulations do not unintentionally capture these ''coolers'' that were not considered part of a ''heat exchange system'' in our original analysis and that we did not intend to be monitored under the Refinery MACT 1 regulations.

See the new regulatory definition at 40 CFR 63.641 for heat exchange system.

Comment: One commenter suggested that the EPA define the term ''strippable hydrocarbons'' to mean the hydrocarbons measured by any of the methods specified in 40 CFR 65.610(a)(3).

Response: We considered providing a specific definition of ''strippable hydrocarbons'' in these final amendments, but the suggested definition is unnecessary since we are not finalizing the use of water methods as an alternative monitoring method for petroleum refineries. The monitoring method required by the regulations, the Modified El Paso Method, provides the best definition of strippable hydrocarbons as it relates to potential emissions from heat exchange systems.

2. Applicability and Exemptions

Comment: One commenter supported the proposed revisions clarifying the construction date criteria for defining a new source for the purpose of the heat exchange provisions.

Response: We appreciate support of this clarification.

Comment: One commenter recommended deleting the provision that limits once-through heat exchange systems to a single process unit because the MACT floor analysis does not support this approach. Although the process unit restriction is currently in 40 CFR 63.641, the commenter noted that this language was not in the September 4, 2007, proposal or the November 10, 2008, supplemental proposal and, therefore, has not been subject to public comment until now. The commenter stated that, if the process unit restriction is maintained, the EPA should limit the rule to monitoring systems with a flow greater than 5,000 gallons per minute because the EPA's analysis shows control for smaller systems is not cost effective. The commenter also suggested that the EPA's analysis did not consider monitoring once-through systems individually.

Response: Although the original MACT floor and impacts analysis (see the technical memorandum titled, ''Cooling Towers: Control Alternatives and Impact Estimates,'' Docket Item No. EPA–HQ–OAR–2003–0146–0143) referred to ''cooling towers'' rather than ''heat exchange systems,'' we believe the analysis adequately considered all heat exchange systems at all petroleum refineries. We projected the nationwide total number of ''cooling towers'' to be 520 using information from the Texas Commission on Environmental Quality (TCEQ) for 50 petroleum refineries and extrapolating (considering capacity) to all U.S. petroleum refineries. Based on this analysis, every refinery was projected to have several ''cooling towers'' or ''heat exchange systems'' in our MACT floor and impacts analysis, and we assumed that refineries with once-through cooling systems would have a similar number of heat exchange systems (per refining capacity) as refineries with closed-loop (cooling tower) systems. We conducted analyses to determine how the number of cooling towers or heat exchange systems would affect our MACT floor calculations if there were more than our estimated 520. Because the monitoring and repair requirements for many of the best-performing heat exchange systems were identical, we determined that the MACT floor requirements for existing sources would be the same even if there were as many as 666 affected ''cooling towers'' or ''heat exchange systems'' (see the technical memorandum titled, ''Revised Impacts for Heat Exchange Systems at Petroleum Refineries,'' Docket Item No. EPA–HQ–OAR–2003–0146–0230).

To further verify our MACT floor calculations, we reviewed the information collected during the detailed information collection request (ICR) for petroleum refineries (see Docket Item Nos. EPA–HQ–OAR–2010–0682–0061 through 0069). The definition for heat exchange system in the ICR was identical to the definition in Refinery MACT 1 (with once-though systems limited to individual process units). Based on the ICR responses, there are 525 heat exchange systems that are in organic HAP service and that do not qualify for the exemption from monitoring based on higher water-side pressures; only 21 of these 525 are once-through heat exchange systems. We note that there are 50 additional closed-loop heat exchange systems for which respondents did not answer these ''applicability'' questions, so we project that the total number of affected heat exchange systems is somewhat more than 525 but less than 575. Therefore, our estimate of 520 affected heat exchange systems (including once-through systems) was reasonably accurate, and the existing source MACT floor monitoring requirements would not be impacted had we used the upper range estimate from the ICR data. As such, we disagree that our MACT floor analysis is inconsistent with the restriction of once-through systems to a single process unit.

With respect to the suggestion that we limit the monitoring of closed-loop heat exchange systems to only those with flows of 5,000 gallons per minute or more, we note that closed-loop heat exchange systems that have flow rates less than 5,000 gallons per minute are common at refineries. These smaller heat exchange systems were included in our MACT floor and impacts analysis, and we did not subcategorize these heat exchange systems by size. The assertion that monitoring these smaller heat exchange systems is not cost effective is not relevant; we do not consider costs in developing the MACT floor requirements. We only consider costs when evaluating alternatives beyond the MACT floor. As described previously, we believe we adequately considered the total number of affected heat exchange systems (including once-through and small heat exchange systems) when establishing the MACT floor requirements for existing sources.

We noted in the January 2012 proposal that: ''A once-through heat exchange system could include all heat exchangers at the entire facility. The potential to aggregate all cooling water at a facility (as opposed to a single process unit) prior to sampling for a once-through system would greatly reduce the effectiveness of the leak monitoring methods and would allow HAP or VOC leaks to remain undetected, based solely on the dilution effect from the vast quantity of water processed at the facility.'' (See 77 FR 967). We specifically requested comment on how we might allow some aggregation across units but not allow dilution across all units at the plant. The commenter did not provide any suggestions on this point, but rather suggested that if aggregation were not allowed, once-through heat exchange systems with flow less than 5,000 gallons per minute should be excluded.

For closed-loop heat exchange systems, there are physical limitations on the cooling tower that limit the number of units that can be serviced by the cooling tower. Again, our analysis suggested there would be several heat exchange systems per refinery compared to a single heat exchange system for once-through systems. On the other hand, we recognize that the definition of ''heat exchange system'' in the October 2009 final rule limits aggregation for refineries operating once-through systems more than refineries that operate closed-loop systems. Therefore, we evaluated several ways to afford some aggregation for once-through heat exchange systems so that these systems would be more comparable to the ''cooling tower'' heat exchange systems identified in the MACT floor memorandum (Docket Item No. EPA–HQ–OAR–2003–0146–0143). We identified no appropriate way to allow some, but constrained aggregation

across process units within the definition of heat exchange system. Therefore, we are not modifying the definition of ''heat exchange system'' as it relates to once-through systems (*i.e.,* a once-through heat exchange system is still limited to the heat exchangers associated with a single refinery process unit). As an alternative, we evaluated allowing monitoring for once-through cooling systems at locations that include cooling water from several heat exchange systems. Based on the responses from the detailed ICR, approximately 90 percent of all cooling towers (i.e., closed-loop heat exchange systems) at petroleum refineries have flow rates of 40,000 gallons per minute or less. As such, we consider that this 90th percentile value provides a reasonable proxy of the upper level of aggregation provided to facilities with closed-loop heat exchange systems. By allowing once-through heat exchange systems to monitor at locations that include cooling water from several heat exchange systems, provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute, we are providing a means to aggregate across process units in a manner similar to that afforded to closed-loop heat exchange systems, which is the assumption made in our MACT floor and impacts analyses. As this level of aggregation is similar to that for closed-loop heat exchange systems, we expect that this provision will achieve the same emission reductions at the same costs as projected for our model closed-loop heat exchange systems. We also note that this approach is preferable to the suggested exemption for all once-through heat exchange systems below 5,000 gallons per minute because it achieves greater emission reductions at similar costs. Therefore, we have amended the monitoring location for once-through heat exchange systems to allow monitoring at a point where discharges from multiple heat exchange systems are combined, provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

Comment: Several commenters stated that the EPA should retain the exemption for heat exchange systems that have an intervening cooling fluid that contains less than 5 percent by weight of HAP.

Response: This exemption was included in the October 2009 final standards for refinery heat exchange systems and it was our intent to retain this existing exemption for petroleum refineries. However, when the heat exchange system Uniform Standards were proposed, we inadvertently omitted a cross-reference to this exemption from Refinery MACT 1. As noted previously, we are not promulgating the Uniform Standards or the cross-references to the Uniform Standards from Refinery MACT 1. The provision to exempt heat exchange systems that use an intervening fluid that is less than 5 percent by weight HAP is retained as a part of Refinery MACT 1.

Comment: One commenter suggested that the introductory paragraph in 40 CFR 65.610(b) should specify that engineering judgment may be used to determine whether any of the exemption criteria are met.

Response: As noted in section III of this preamble, heat exchangers may be excluded from a ''heat exchange system'' based on differential pressure or the presence and content of an intervening fluid. We did not specify that engineering judgment can be used for the differential pressure exemption, either in the October 2009 final rule or the January 2012 proposed amendments. We expect that direct pressure measurements of the process fluids and cooling water lines will be made in a representative location at which the pressure exclusion can be documented. With respect to the intervening fluid exemption, we intended that the same requirements used to determine ''in organic HAP service'' would apply to the intervening fluid. We revised the description of this exemption to specify that the provisions of 40 CFR 63.180(d) of subpart H should be used; 40 CFR 63.180(d) allows the use of ''good engineering judgment'' under most circumstances.

3. Compliance Date

Comment: One commenter suggested that the compliance date be reset to be at least 1 year after the promulgation date of the final amendments to provide time for the refineries to develop procedures for complying with the proposed options and any other changes made in response to public comments.

Response: Petroleum refinery owners and operators have been on notice of the October 29, 2012, compliance date since promulgation of the heat exchange standards in October 2009. Refinery owners and operators that follow the requirements in the October 2009 final rule will be in compliance with these final amendments. If a facility elects to change to quarterly monitoring at the lower leak definition, there are provisions in the final amendments for how this change can be made. Therefore, there is no need to reset the compliance date.

4. Monitoring Locations and Analytical Methods

Comment: Several commenters requested that a leak be determined based on the difference between inlet and outlet concentrations. One commenter specifically noted that the EPA should reconsider this approach, which is used in the Hazardous Organic NESHAP (''HON''; 40 CFR part 63 subpart F), for refinery heat exchange systems. The commenter disputed the EPA claims that accumulating hydrocarbons in the cooling water are evidence of a leak and that small leaks are cost effective to repair, stating the build-up of organic chemicals can be caused by the use of chemical additives for corrosion or biological growth prevention and these heavy compounds are not stripped in the cooling tower as completely as they are in the Modified El Paso Method stripping column.

Response: The rule does not provide for the use of inlet and outlet sampling for closed-loop heat exchange systems because the MACT floor requirements for heat exchange systems were based on existing monitoring of the cooling water return line only. If the rule allowed the use of a concentration differential, it would be less stringent than the MACT floor because the MACT floor monitoring was not based on a differential concentration, but the direct concentration in the cooling water return line. Although we expect that the strippable hydrocarbons measured by the Modified El Paso Method will be largely removed (i.e., released to the air) in the cooling tower so that the cooling water inlet to the heat exchangers will have limited concentrations of strippable hydrocarbons, it is unlikely that this concentration would be exactly zero. Therefore, using a concentration differential produces a concentration that has been adjusted to account for hydrocarbons still in the water after the cooling tower, and is lower and therefore less likely to trigger the leak definition. We did not allow this option for closed–loop heat exchangers. The rule does provide for the use of inlet and outlet sampling for once-through heat exchange systems. While we have taken the position that once-through heat exchange systems have a similar emission potential as closed-loop systems, we acknowledge that these systems are different in operation and that contaminants may be present in the pond, river or other source of once-through cooling water that is beyond the control of the refinery owner or operator and that will not be ''pre-stripped'' in a cooling tower. Therefore, we conclude that it is reasonable and necessary to

allow a concentration differential to be used to determine a leak for once-through heat exchange systems.

Comment: One commenter noted that the requirements in 40 CFR 65.610(e) are unnecessarily burdensome because they require a source to monitor all heat exchangers to find a leak and they appear to require continued monthly testing of all heat exchangers even if the leak is not from an exchanger that is subject to the repair requirements. This commenter also recommended simply requiring the leaking exchanger to be identified by the most expeditious process and then requiring repair only if the leaking exchanger is in service associated with a referencing subpart.

Response: The cited provisions do not require monitoring of all affected heat exchangers to find a leak. The refinery owner or operator can use any method they choose to identify the leaking heat exchanger. If the identified leaking heat exchanger is not in HAP service, then the refinery owner or operator has two options: (1) fix the leak and continue to monitor in the main cooling tower return line or (2) demonstrate that all heat exchangers within the heat exchange system that are subject to the monitoring and repair provisions are not leaking by monitoring each heat exchanger or group of heat exchangers subject to the repair provisions. Thus, the option of monitoring each heat exchanger or group of heat exchangers is not required to identify the leaking heat exchanger; rather, this monitoring option is provided only for the case in which the refinery owner or operator elects not to fix a leak that was identified through monitoring of the cooling tower return line on the grounds that the leaking heat exchanger is not subject to the repair provisions in Refinery MACT 1.

Comment: One commenter suggested that the monitoring frequency/leak definition alternatives for existing sources should be allowed on an individual or group of heat exchangers basis as well as on a heat exchange system basis.

Response: The rule allows monitoring at the individual heat exchanger (or group of heat exchangers) level or at the heat exchange system level (i.e., monitoring at the cooling tower). However, in order to allow this flexibility for either aggregate or individual monitoring to be performed without any notification to the EPA, all heat exchangers that are part of a heat exchange system must use the same monitoring frequency and leak definition. We considered allowing the suggested alternative for individual heat exchangers within a heat exchange system, but concluded that it would likely result in uncertainty regarding what compliance monitoring, reporting and recordkeeping requirements would be required for individual heat exchangers. As the affected facility is the heat exchange system, we consider it appropriate that the same monitoring frequency and leak definition be used for all monitoring locations within one heat exchange system. The final rule clearly allows (in 40 CFR 63.654(c)(4)) the owner or operator of existing sources to use the alternative quarterly monitoring option for some heat exchange systems and the monthly monitoring option for others but all heat exchangers or groups of heat exchangers within a single heat exchange system must use the same monitoring frequency and leak definition.

Comment: Two commenters noted that section 5.1.1.4 of the Modified El Paso Method specifies that samples must be drawn from a location prior to the risers. The commenter requested clarification that monitoring may instead be conducted either prior to the risers or in any individual riser because the concentration of hydrocarbons is distributed equally to each riser and the system has no openings to the atmosphere prior to discharge into the cooling tower cells. They also noted that refineries often monitor in a riser and changes needed to enable monitoring prior to the riser would require a significant capital expenditure.

Response: The final amendments describe monitoring locations specific for Refinery MACT 1 and then separately describes the allowed monitoring methods. Reference to the Modified El Paso Method is confined to the monitoring method section of Refinery MACT 1, and the Modified El Paso Method's restriction on sampling in the riser is not applicable. Nonetheless, we have provided specific clarifications in the monitoring location section that monitoring in the cooling tower riser (prior to exposure to the atmosphere) is allowed.

Comment: One commenter stated that, in addition to a flame ionization detector, the EPA should allow use of other detectors, such as a photo ionization detector or mass spectrometry and online gas chromatograph (GC) capable of equivalent sensitivity for target compounds when using the Modified El Paso Method.

Response: We specifically require the stripping gas concentration to be determined in ppmv as methane. While a refinery owner or operator may elect to use a GC and other analyzers to speciate the compounds present in the cooling water in order to identify the specific heat exchangers or group of heat exchangers responsible for the leak, the leak itself must be determined using a flame ionization detector calibrated with methane following the procedures in section 6.1 of the Modified El Paso Method. As discussed in further detail in the following comment and response, we find that speciated analysis of target compounds in the stripping gas is likely to result in incomplete characterization of the total hydrocarbon concentration and could be less stringent than the MACT floor determined for petroleum refinery heat exchange systems. We have further clarified this requirement in these final amendments by specifically referencing section 6.1 of the Modified El Paso Method. However, this requirement does not preclude the refinery owner or operator from conducting additional analysis of the stripping gas as a means to identify the leaking heat exchanger.

Comment: Several commenters requested that the rule allow additional measurement methods in order to characterize the compounds that could leak into the cooling water. The measurement methods suggested include EPA Method 624 of Appendix A to 40 CFR part 136 and SW–846 Methods 8270 and 8315. Commenters also stated that characterizing all volatile compounds (or even all volatile organic HAP) is often impossible due to the high number of compounds that may be in a process stream, and it is not necessary, as detection of key compounds from the process is all that is needed to identify a leak. One commenter suggested that this rule should be like the TCEQ's rule that requires characterization of compounds with boiling points less than 140 degrees Fahrenheit (°F). This commenter recommended allowing any measurement method that is sensitive to at least 90 percent of the species with boiling points less than 140 °F, and allowing subtraction of compounds with boiling points greater than 140 °F from the ''total strippable hydrocarbon'' concentration. Several commenters recommended including a general procedure for monitoring surrogate species or indicator species rather than requiring full speciation. For example, one commenter requested that the rule allow the analysis to focus on one compound that the method easily detects and then estimate the total strippable hydrocarbon concentration assuming the ratio of that compound to all organic compounds in the cooling water is the same as in the process fluid.

Response: We acknowledge the difficulty characterizing all compounds

in a petroleum refinery process stream. While we considered including additional test methods, the inclusion of additional test methods did not appear to address the primary issue regarding the ability to fully characterize the compounds that could leak into the cooling water. We disagree that the characterization of compounds should be limited to compounds with boiling points less than 140 °F. Hexane, benzene and toluene all have boiling points above 140 °F; these compounds are expected to be emitted from heat exchange systems and are expected to be detectable using the Modified El Paso Method. The Modified El Paso Method was designed to have high (99 percent or higher) recovery of compounds with boiling points below 140 °F and avoids potential losses of highly volatile compounds associated with direct water sampling methods. For this reason, while the Modified El Paso Method is required to be used by the TCEQ for cooling tower sampling when pollutants have boiling points below 140 °F, it is incorrect to conclude that the Modified El Paso Method will not measure any compounds with boiling points greater than 140 °F.

Since the data used to establish the MACT floor were based on the Modified El Paso Method, in order to be at least as stringent as the MACT floor, any alternative monitoring option provided in the rule must be as effective as the El Paso Method in detecting the HAP that are indicative of a leak. Limiting the direct water method analysis only to compounds with boiling points less than 140 °F would be less stringent than the Modified El Paso Method and thus we disagree with the commenter that direct water methods should be provided as an option.

In the proposed Heat Exchanger Uniform Standards, we proposed to allow the use of a water method that would identify all leaked compounds as an alternative monitoring method. Our intent was for this approach to be used where a heat exchanger cooled a process fluid that contained a very limited number of compounds. We expected that very few, if any, petroleum refinery heat exchange systems would choose to use the water methods for most heat exchangers, given the requirement to fully characterize all compounds that could leak into the cooling water.

The proposed water methods were expected to be at least as stringent as the Modified El Paso Method because the requirement to fully characterize the pollutants that could leak into the wastewater would include all compounds, even those that may not be effectively stripped in the stripping column (or cooling tower). Options to limit the full characterization requirement call into question the ability of the water methods to be as stringent as the total strippable hydrocarbon analysis using the Modified El Paso Method.

In light of the complexity of most petroleum refinery process streams, we are concerned that there may be a leak that exceeds 40 parts per billion by weight (ppbw) total strippable hydrocarbons in the water-phase as determined by back-calculation from the Modified El Paso Method results, but because of the number of different compounds present in the petroleum refinery stream (often on the order of 50 to 100 different compounds), the concentrations of the individual compounds could all be below the analytical detection limit (typically about 5 to 10 ppbw in the cooling water). In such a case, the water methods, even with low detection limits, may not provide a suitable alternative to the Modified El Paso Method for refinery heat exchange systems.

To further evaluate our concerns regarding the use of water measurement methods for refinery heat exchange systems, we reviewed the source test data received in response to the cooling water testing required as part of the detailed information collection request for petroleum refineries. We compared the stripping column gas sampling results with those from the direct water methods (see the memorandum titled, ''Evaluation of the Refinery ICR Cooling Water Analysis Results'' in Docket ID No. EPA–HQ–OAR–2003–0146). We found that the analytical methods for chemical species (in both stripping gas analysis and water samples) greatly underestimated the overall concentrations of hydrocarbons, primarily because these analyses were conducted using a specific target analyte list. As the water methods (or gas-phase speciated analysis methods) generally include a specific list of target analytes, we now expect that these methods could lead to less effective leak identification.

We considered the alternative of monitoring a specific compound and extrapolating that compound concentration to determine a total strippable hydrocarbon concentration, but we determined that this approach generally would be more complicated and burdensome than direct Modified El Paso monitoring, given the complexity of petroleum refinery process fluids and the likelihood that several different heat exchangers (with process fluids of differing compositions) may be serviced by a single cooling tower (i.e., heat exchange system). We see no easy way to specify ''a general procedure for monitoring surrogate species or indicator species'' while ensuring equivalency with the Modified El Paso Method. One would need to use the Modified El Paso Method to develop the extrapolation factor for each process fluid that could potentially leak into the cooling water and to verify that the method used provides adequate detection limits. This would be difficult to do and complex, considering the potential variation in compounds and concentrations across process streams.

Given the complexity of most petroleum refinery process streams, we were unable to identify from the currently available water methods a method that would be suitable for determining the total strippable hydrocarbon concentration with the accuracy and sensitivity needed to be comparable to the Modified El Paso Method. Therefore, we are not finalizing any alternative water methods for monitoring petroleum refinery heat exchange systems.

Comment: Several commenters requested that the rule allow measurement of surrogates. One commenter requested inclusion of the full spectrum of monitoring methods currently listed in the HON, the National Emission Standards For Ethylene Manufacturing Process Units: Heat Exchange Systems And Waste Operations (40 CFR part 63, subpart XX) (''Ethylene NESHAP''), and the online monitoring for ethylene and propylene that is allowed in TCEQ HRVOC Rule (TAC Title 30 Part I Chapter 115 Div. 2 § 115.764). One commenter noted that the proposed methods would require most facilities to use offsite test resources, but other methods, particularly if surrogates can be measured, would allow sites to conduct analyses themselves and respond more quickly to any leaks.

Response: We disagree with the comments suggesting all measurement methods provided in the HON, the Ethylene NESHAP or the TCEQ rules should be allowed. The leak definition for petroleum refineries is lower than specified in those rules. In our revised impacts analysis for the proposed amendments(see the technical memorandum titled, ''Revised Impacts for Heat Exchange Systems at Petroleum Refineries,'' Docket Item No. EPA–HQ–OAR–2003–0146–0230), the leak detection level was generally the most important parameter influencing the effectiveness of the heat exchange system monitoring program. We evaluated a series of ''surrogate''

methods when evaluating different heat exchange system monitoring alternatives for the October 2009 final rule and concluded that these surrogate methods were not as effective as identifying leaks as the Modified El Paso Method.

We acknowledge that the proposed water method alternatives would often require the use of external laboratories; however, as discussed previously, we are not finalizing the proposed water method alternatives. The Modified El Paso Method, on the other hand, is performed on-site. The method is relatively simple and can be operated by refinery personnel or outside contractors to provide immediate leak monitoring results, so it has the same advantages of the ''surrogate'' methods while also being able to detect small leaks.

Comment: One commenter requested that sources be allowed up to 7 calendar days for re-monitoring a heat exchange system to verify repair when a repaired heat exchanger is returned to service either after the end of the 45-day normal repair window (as long as the heat exchanger was taken out of service before the end of that 45-day window) or after an allowed delay of repair period. The commenter noted that if the heat exchanger is taken out of service as the means of repair and then brought back into service after the 45-day window, then additional time is needed to start up, line-out, and retest that heat exchanger.

Response: In the January 2012 proposal, we proposed to clarify that under the existing MACT standard, ''repair'' includes verification that the actions taken to repair the leak were effective through re-monitoring of the heat exchange system. We consider the 45-day repair window for a typical repair as well as the additional time provided for a delayed repair to be adequate considering the time necessary to re-monitor the heat exchange system. We expect that repairs will be made as expeditiously as possible and that the actions will be taken with sufficient time to confirm the repairs within the 45-day repair window. Refinery MACT 1 specifically allows the use of removing a heat exchanger from service as a means to effect repair in 40 CFR 63.654(d)(5). The heat exchange system would need to be re-monitored within the 45-day window to verify that the removal of the heat exchanger effectively reduced the total hydrocarbons in the cooling water to below the leak threshold levels. In this case, the removal of the heat exchanger from service would accomplish the repair and the owner or operator could revert back to their chosen monitoring frequency.

The rule is silent on a special monitoring event for the case in which the removed heat exchanger is subsequently placed back into service. This case is similar to the case where a new heat exchanger (or group of heat exchangers) is added to an existing heat exchange system. We interpret the rule to require only the routine heat exchange system monitoring with no special monitoring event required when adding these ''new'' heat exchangers to the heat exchange system. We anticipate that any ''new'' or ''repaired'' heat exchanger would be properly pressure tested prior to being placed in service. As such, these heat exchangers would be unlikely to leak, so the routine monitoring frequency is considered sufficient. We also note that, if an owner or operator removes a heat exchanger from service as a means to effect a repair, but then returns the same heat exchanger to service without any modification or repair, that owner or operator could be subject to potential enforcement actions for not complying with the operating and maintenance requirement ''. . . to maintain any affected source . . . in a manner consistent with safety and good air pollution control practices for minimizing emissions'' as required in the General Provisions at 40 CFR 63.6(e).

5. Delay of Repair

Comment: One commenter suggested allowing delay of repair until the next scheduled process shutdown if the source opts to strip hydrocarbon from the cooling water and either recover it (as fuel or for process use) or collect and convey it to combustion control.

Response: Provided that the stripped gases are properly captured and controlled, the current provisions would not exclude these actions as a means of compliance. The rule only lists those repair actions that are most likely to occur but we explicitly indicate that the list of repair actions is not all inclusive. If the actions described by the commenter reduce the concentration of strippable hydrocarbons to below the applicable leak action levels while preventing the release of those hydrocarbons to the atmosphere, we consider that these actions qualify under 40 CFR 63.654(d) as a repair, in which case the delay of repair would not be needed.

If the actions described by the commenter do not reduce the strippable hydrocarbon concentration to below the leak action level, the existing delay of repair provisions, if applicable, can be used to continue operating until the next scheduled shutdown. In this case, the actions described by the commenter could be used to help prevent an exceedance of the delay of repair action level and thereby maintain the delayed repair. However, if the leak ever exceeds the delay of repair action level, the owner or operator could not use these actions merely to reduce the strippable concentration to below the delay of repair action level. Once the delay of repair threshold is exceeded, the owner or operator of the affected heat exchange system must repair the source within 30 days by reducing the strippable hydrocarbon concentration to below the leak action level.

Comment: One commenter requested confirmation that the guidelines given in TCEQ's Sampling Procedures Manual, Appendix P, paragraph 7.2 should be used for determining the molecular weight to use in equation 7.1 of the Modified El Paso Method when determining potential emissions during a delayed repair.

Response: The TCEQ's Sampling Procedures Manual, Appendix P, is the Modified El Paso Method that is incorporated by reference in the heat exchange system provisions of Refinery MACT 1. In 40 CFR 63.654(g)(4), we specifically indicate that the stripping air concentration must be converted to a water concentration using Equation 7–1 of the Modified El Paso Method. Paragraph 7.2 of the Modified El Paso Method specifically notes that ''[f]or total VOC based on the portable FID analyzer procedure in Section 6.1, calculate total VOC concentration in the water and emission rate based on the molecular weight of methane . . .'' We specifically require the use of the stripping gas concentration to be determined using flame ionization detector (FID), as noted in section 6.1 of the Modified El Paso Method, calibrated with methane (''as methane''). Therefore, the molecular weight of methane (16 grams per mole) should be used when determining the equivalent water concentration using Equation 7–1 of the Modified El Paso Method when calculating the potential strippable hydrocarbon emissions for a delayed repair. We have clarified this requirement in these final standards.

6. Reporting and Recordkeeping Provisions

Comment: One commenter requested clarification that the requirement to record water flow rates applies only to monitoring events in which a leak is detected and the equipment is placed on delay of repair because this is the only occasion in which flow rates are

needed. Another commenter stated that records of water flow and emissions estimates should be required only if the rule allows delay of repair based on a demonstration that the emissions caused by delaying repair are less than the emissions caused by a process unit shutdown, if needed, to effect the repair because this is the only situation where water flow and emissions are relevant. If these requirements are not deleted, one of the commenters stated that the EPA should clarify that the recordkeeping requirement is an estimate of ''potential strippable hydrocarbon emissions'' instead of ''potential emissions'' because the latter might be misinterpreted to mean organic HAP emissions, which are only a fraction of the hydrocarbon emissions. In addition, a commenter stated that the EPA should clarify that reporting of ''an estimate of total strippable hydrocarbon emissions for each delayed repair over the reporting period'' covers only the time period from the date by which repair would have had to be completed if it were not delayed until the repair was completed.

Response: The October 2009 final rule requires a record of the cooling water flow rate for each monitoring event. However, the commenter correctly notes that the requirement in 40 CFR 63.654(g)(4)(ii) to determine the flow rate of cooling water only applies during periods in which repair is delayed. As such, we agree with the commenter that the regulations should not require records of the cooling water flow rate for all cooling towers or heat exchangers because the flow rate only needs to be determined for heat exchange systems for which repair is delayed. Therefore, we are moving the requirement to keep a record of the cooling water flow rate to the paragraph that is limited to delayed repairs, which is 40 CFR 63.655(i)(4)(v) in today's final rule.

We disagree that recordkeeping and reporting of flow rate and potential emissions should only be required where emission caused by delay of repair are demonstrated to be less than they otherwise would be during a shutdown. Stakeholders including the public should be made aware of the potential air emissions releases that may occur based on the decision to delay repair.

We agree that the phase ''potential strippable hydrocarbon emissions'' more accurately describes the delay of repair emission estimate than the phrase ''potential emissions'' and we are clarifying the language as suggested by the commenter. Specifically, we are revising ''potential emissions'' to instead read ''potential strippable hydrocarbon emissions'' in the heat exchange system requirements at 40 CFR 63.654(g)(4), the reporting requirements at 40 CFR 63.655(g)(9)(v) and the recordkeeping requirements at 40 CFR 63.655(i)(4)(v) in today's final rule.

As described previously in section III of this preamble, today's final rule requires that these emission estimates be determined for each monitoring interval instead of over the ''expected duration of the delay.'' To address the commenter's concern, we are specifying in 40 CFR 63.654(g)(4)(iii) that ''The duration of the delay of repair monitoring interval is the time period starting at midnight of the day of the previous monitoring event or midnight of the day the repair would have had to be completed if the repair had not been delayed, whichever is later, . . .'' Given this clarification in the start of the delay of repair interval and the coordination between the emission estimate methodology and reporting requirements, we do not believe that additional language is needed in 40 CFR 63.655(g)(9)(v) to further clarify that the delay of repair starts at the end of the 45-day period provided to complete a repair under normal circumstances.

Comment: One commenter requested clarification of the term ''original date'' in the reporting requirements in 40 CFR 63.655(g)(9)(v) for delayed repair.

Response: We are clarifying this regulatory provision by revising the phrase ''original date'' to instead say ''date when the delay of repair began.'' As noted in the clarified language regarding the calculation of potential emissions during a delayed repair, the date the delay of repair began is equivalent to the day the repair would have had to be completed if the repair had not been delayed.

Comment: One commenter stated that the proposed requirements to identify the ''measured or estimated average annual regulated material concentration of process fluid or intervening cooling fluid processed in each heat exchanger'' will be a very burdensome and unnecessary ongoing requirement rather than one-time requirement as specified in 40 CFR 63.655(i)(4)(i).

Response: We agree that we should retain this as a one-time requirement. We did not intend to make this an ongoing requirement. The revised language cited by the commenter was part of the proposed Uniform Standards, which we proposed to cross-reference from Refinery MACT 1 but are not finalizing in this action. We are not revising the ''one-time'' requirement as specified in 40 CFR 63.655(i)(4)(i).

Comment: One commenter suggested deleting paragraphs (b) and (c) in 40 CFR 65.620 (*i.e.,* reporting the number of heat exchange systems in regulated material service found to be leaking and the summary of the monitoring data that indicate a leak) because they duplicate the information required by paragraph (d) (*i.e.,* reporting the date a leak was identified, the date the source of the leak was identified and the date of repair) or are unnecessary. Alternatively, the commenter suggested that the EPA should at least revise 40 CFR 65.620(b) to require reporting of the number of leaking heat exchangers rather than heat exchange systems, and revise 40 CFR 65.620(c) to clarify what monitoring data to report and eliminate the redundancy.

Response: The comments refer to the reporting and recordkeeping provisions that we proposed to codify as part of the Uniform Standards, which we are not finalizing in this action. The similar provisions in Refinery MACT 1, which we are retaining rather than cross-referencing the Uniform Standards, as proposed, are the reporting provisions in 40 CFR 63.655(g)(9)(ii) through (iv). We disagree with the commenter that there is undue overlap in these provisions. The number of heat exchange systems at the plant site found to be leaking (40 CFR 63.655(g)(9)(ii)) provides a useful summary to the report review. Analogous to the number of fugitive components found to be leaking over a semiannual period, which is also required to be reported under Refinery MACT 1, this information is an indicator of both leak program effectiveness and the refinery's operating and maintenance practices. While one could count each entry in the list of leaking heat exchange systems required in 40 CFR 63.655(g)(9)(iii), we do not consider this duplicative of the list. We do agree that the ''summary of monitoring data'' could be more clearly delineated. To address this concern, we have revised the provisions in 40 CFR 63.655(g)(9)(iii) to specifically list the desired reporting elements. We also consolidated some of the reporting elements from 40 CFR 63.655(g)(9)(iv) into 40 CFR 63.655(g)(9)(iii) and revised 40 CFR 63.655(g)(9)(iv) to focus on reporting elements for leaks that were repaired during the reporting period. These reporting requirements are now more clear and distinct with no duplication.

Comment: One commenter noted that it would be burdensome to identify, characterize or include pump seal coolers and sample coolers in the heat exchanger inventory and applicability determination. The commenter stated

that there is no need for this requirement because those that are once-through coolers should be presumed to meet the low flow exemption criteria and those that are part of a recirculating system with large heat exchangers would be effectively regulated by monitoring of the cooling tower return lines.

Response: We never intended to require monitoring of sample coolers and pump seal coolers. As discussed previously, sample coolers and pump seal coolers are specifically excluded from the definition of heat exchange system in today's final rule, so these coolers do not have to be identified as part of the heat exchange system recordkeeping provisions.

V. Summary of Impacts

These final amendments will have no cost, environmental, energy or economic impacts beyond those impacts presented in the October 2009 final rule for heat exchange systems at petroleum refineries. If the owner or operator of an existing petroleum refinery elects the quarterly monitoring alternative at the lower leak definition or if the owner or operator of a once-through system can aggregate flows across process unit boundaries, we anticipate that the facility will realize a net cost savings compared to the costs estimated for the October 2009 final rule. All other amendments are projected to be cost-neutral.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final amendments are clarifications and technical corrections that do not affect the estimated burden of the existing rule. Therefore, we have not revised the information collection request for the existing rule. However, OMB has previously approved the information collection requirements contained in the existing rule (40 CFR Part 63, subpart CC) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* and has assigned OMB control number 2060–0340. 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 will not have a significant economic impact on a substantial number of small entities (SISNOSE). Small entities include small businesses, small organizations and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (a firm having no more than 1,500 employees); (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 SISNOSE. In determining whether a rule has a SISNOSE, 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 SISNOSE if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Based on our economic impact analysis, the amendments will have no direct cost impacts (or they will result in a nationwide net cost savings). No small entities are expected to incur annualized costs as a result of the final amendments; therefore, no adverse economic impacts are expected for any small or large entity. Thus, the costs associated with the final amendments will not result in any ''significant'' adverse economic impact for any small entity. We have, therefore, concluded that today's 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 to the private sector in any one year. As discussed earlier in this preamble, these amendments are cost neutral and may result in net cost savings for the private sector. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (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. These final amendments do not add new control and performance demonstration requirements. They do 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. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on the proposed amendments from state and local officials.

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 will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. 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 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 a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that the final amendments are not likely to have any adverse energy effects because they are cost neutral and may result in cost savings if the quarterly monitoring option is elected.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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. Voluntary consensus standards 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 action does not involve any new technical standards. Therefore, the EPA did not consider the use of any additional 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 (EJ). Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ 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 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 do not relax the control measures on regulated sources, and, therefore, do not change the level of 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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule 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 rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on June 20, 2013.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: June 12, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraph (n)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(n) * * *

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (Modified El Paso Method), Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003, IBR approved for §§ 63.654(c), 63.654(g), 63.655(i), and 63.11920.

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Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 3. Section 63.640 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (c)(8);

■ c. Revising paragraph (h)(1) introductory text, adding paragraph (h)(1)(i) and revising paragraph (h)(1)(ii); and

■ d. Removing reserved paragraph (h)(1)(iii) and paragraph (h)(1)(iv).

The additions and revisions read as follows:

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(1) through (8) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(c) * * *

(8) All heat exchange systems, as defined in this subpart.

* * * * *

(h) * * *

(1) Except as provided in paragraphs (h)(1)(i) and (ii) of this section, new sources that commence construction or reconstruction after July 14, 1994, shall be in compliance with this subpart upon initial startup or August 18, 1995, whichever is later.

(i) At new sources that commence construction or reconstruction after July 14, 1994, but on or before September 4, 2007, heat exchange systems shall be in compliance with the existing source requirements for heat exchange systems specified in § 63.654 no later than October 29, 2012.

(ii) At new sources that commence construction or reconstruction after September 4, 2007, heat exchange systems shall be in compliance with the new source requirements in § 63.654 upon initial startup or October 28, 2009, whichever is later.

* * * * *

■ 4. Section 63.641 is amended by revising the definitions of ''Heat exchange system'' and ''In organic hazardous air pollutant service'' to read as follows:

§ 63.641 Definitions.

* * * * *

Heat exchange system means a device or collection of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the *heat exchange system* consists of a cooling tower, all petroleum refinery process unit heat exchangers that are in organic HAP service, as defined in this subpart, serviced by that cooling tower, and all water lines to and from these petroleum refinery process unit heat exchangers. For once-through systems, the *heat exchange system* consists of all heat exchangers that are in organic HAP service, as defined in this subpart, servicing an individual petroleum refinery process unit and all water lines to and from these heat exchangers. Sample coolers or pump seal coolers are not considered heat exchangers for the purpose of this definition and are not part of the *heat exchange system.* Intentional direct contact with process fluids results in the formation of a wastewater.

* * * * *

In organic hazardous air pollutant service or *in organic HAP service* means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d) of this part and table 1 of this subpart. The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

* * * * *

■ 5. Section 63.654 is amended by:

■ a. Revising paragraphs (b) and (c);

■ b. Revising paragraph (d) introductory text;

■ c. Revising paragraphs (e) and (f);

■ d. Revising paragraph (g) introductory text and paragraph (g)(4).

The revisions read as follows:

§ 63.654 Heat exchange systems.

* * * * *

(b) A heat exchange system is exempt from the requirements in paragraphs (c) through (g) of this section if all heat exchangers within the heat exchange system either:

(1) Operate with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side; or

(2) Employ an intervening cooling fluid containing less than 5 percent by weight of total organic HAP, as determined according to the provisions of § 63.180(d) of this part and table 1 of this subpart, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(c) The owner or operator must perform monitoring to identify leaks of total strippable volatile organic compounds (VOC) from each heat exchange system subject to the requirements of this subpart according to the procedures in paragraphs (c)(1) through (6) of this section.

(1) *Monitoring locations for closed-loop recirculation heat exchange systems.* For each closed loop recirculating heat exchange system, collect and analyze a sample from the location(s) described in either paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(i) Each cooling tower return line or any representative riser within the cooling tower prior to exposure to air for each heat exchange system.

(ii) Selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s).

(2) *Monitoring locations for once-through heat exchange systems.* For each once-through heat exchange system, collect and analyze a sample from the location(s) described in paragraph (c)(2)(i) of this section. The owner or operator may also elect to collect and analyze an additional sample from the location(s) described in paragraph (c)(2)(ii) of this section.

(i) Selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s). The selected monitoring location may be at a point where discharges from multiple heat exchange systems are combined provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

(ii) The inlet water feed line for a once-through heat exchange system prior to any heat exchanger. If multiple heat exchange systems use the same water feed (*i.e.,* inlet water from the same primary water source), the owner or operator may monitor at one representative location and use the monitoring results for that sampling location for all heat exchange systems that use that same water feed.

(3) *Monitoring method.* Determine the total strippable hydrocarbon concentration (in parts per million by volume (ppmv) as methane) at each monitoring location using the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14) using a flame ionization detector (FID) analyzer for on-site determination as described in Section 6.1 of the Modified El Paso Method.

(4) *Monitoring frequency and leak action level for existing sources.* For a heat exchange system at an existing source, the owner or operator must comply with the monitoring frequency and leak action level as defined in paragraph (c)(4)(i) of this section or comply with the monitoring frequency and leak action level as defined in paragraph (c)(4)(ii) of this section. The owner or operator of an affected heat exchange system may choose to comply with paragraph (c)(4)(i) of this section for some heat exchange systems at the petroleum refinery and comply with paragraph (c)(4)(ii) of this section for other heat exchange systems. However, for each affected heat exchange system, the owner or operator of an affected heat exchange system must elect one monitoring alternative that will apply at all times. If the owner or operator intends to change the monitoring alternative that applies to a heat exchange system, the owner or operator must notify the Administrator 30 days in advance of such a change. All ''leaks'' identified prior to changing monitoring alternatives must be repaired. The monitoring frequencies specified in paragraphs (c)(4)(i) and (ii) of this section also apply to the inlet water feed line for a once-through heat exchange

system, if monitoring of the inlet water feed is elected as provided in paragraph (c)(2)(ii) of this section.

(i) Monitor monthly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv.

(ii) Monitor quarterly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 ppmv unless repair is delayed as provided in paragraph (f) of this section. If a repair is delayed as provided in paragraph (f) of this section, monitor monthly.

(5) *Monitoring frequency and leak action level for new sources.* For a heat exchange system at a new source, the owner or operator must monitor monthly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 ppmv.

(6) *Leak definition.* A leak is defined as described in paragraph (c)(6)(i) or (c)(6)(ii) of this section, as applicable.

(i) For once-through heat exchange systems for which the inlet water feed is monitored as described in paragraph (c)(2)(ii) of this section, a leak is detected if the difference in the measurement value of the sample taken from a location specified in paragraph (c)(2)(i) of this section and the measurement value of the corresponding sample taken from the location specified in paragraph (c)(2)(ii) of this section equals or exceeds the leak action level.

(ii) For all other heat exchange systems, a leak is detected if a measurement value of the sample taken from a location specified in either paragraph (c)(1)(i), (c)(1)(ii), or (c)(2)(i) of this section equals or exceeds the leak action level.

(d) If a leak is detected, the owner or operator must repair the leak to reduce the measured concentration to below the applicable action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in paragraphs (e) and (f) of this section. Repair includes re-monitoring at the monitoring location where the leak was identified according to the method specified in paragraph (c)(3) of this section to verify that the measured concentration is below the applicable action level. Actions that can be taken to achieve repair include but are not limited to:

* * * * *

(e) If the owner or operator detects a leak when monitoring a cooling tower return line under paragraph (c)(1)(i) of this section, the owner or operator may conduct additional monitoring of each heat exchanger or group of heat exchangers associated with the heat exchange system for which the leak was detected as provided under paragraph (c)(1)(ii) of this section. If no leaks are detected when monitoring according to the requirements of paragraph (c)(1)(ii) of this section, the heat exchange system is considered to meet the repair requirements through re-monitoring of the heat exchange system as provided in paragraph (d) of this section.

(f) The owner or operator may delay the repair of a leaking heat exchanger when one of the conditions in paragraph (f)(1) or (f)(2) of this section is met and the leak is less than the delay of repair action level specified in paragraph (f)(3) of this section. The owner or operator must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable hydrocarbon concentration is initially and remains less than the delay of repair action level for all monthly monitoring periods during the delay of repair, the owner or operator may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monthly monitoring, the delay of repair action level is exceeded, the owner or operator must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the delay of repair action level.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable hydrocarbon concentration is initially and remains less than the delay of repair action level for all monthly monitoring periods during the delay of repair, the owner or operator may delay the repair for a maximum of 120 calendar days. The owner or operator must demonstrate that the necessary equipment, parts, or personnel were not available. If, during subsequent monthly monitoring, the delay of repair action level is exceeded, the owner or operator must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the delay of repair action level.

(3) The delay of repair action level is a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv. The delay of repair action level is assessed as described in paragraph (f)(3)(i) or (f)(3)(ii) of this section, as applicable.

(i) For once-through heat exchange systems for which the inlet water feed is monitored as described in paragraph (c)(2)(ii) of this section, the delay of repair action level is exceeded if the difference in the measurement value of the sample taken from a location specified in paragraph (c)(2)(i) of this section and the measurement value of the corresponding sample taken from the location specified in paragraph (c)(2)(ii) of this section equals or exceeds the delay of repair action level.

(ii) For all other heat exchange systems, the delay of repair action level is exceeded if a measurement value of the sample taken from a location specified in either paragraphs (c)(1)(i), (c)(1)(ii), or (c)(2)(i) of this section equals or exceeds the delay of repair action level.

(g) To delay the repair under paragraph (f) of this section, the owner or operator must record the information in paragraphs (g)(1) through (4) of this section.

(4) An estimate of the potential strippable hydrocarbon emissions from the leaking heat exchange system or heat exchanger for each required delay of repair monitoring interval following the procedures in paragraphs (g)(4)(i) through (iv) of this section.

(i) Determine the leak concentration as specified in paragraph (c) of this section and convert the stripping gas leak concentration (in ppmv as methane) to an equivalent liquid concentration, in parts per million by weight (ppmw), using equation 7–1 from ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14) and the molecular weight of 16 grams per mole (g/mol) for methane.

(ii) Determine the mass flow rate of the cooling water at the monitoring location where the leak was detected. If the monitoring location is an individual cooling tower riser, determine the total cooling water mass flow rate to the cooling tower. Cooling water mass flow rates may be determined using direct measurement, pump curves, heat balance calculations, or other engineering methods. Volumetric flow measurements may be used and converted to mass flow rates using the density of water at the specific monitoring location temperature or using the default density of water at 25 degrees Celsius, which is 997 kilograms per cubic meter or 8.32 pounds per gallon.

(iii) For delay of repair monitoring intervals prior to repair of the leak,

calculate the potential strippable hydrocarbon emissions for the leaking heat exchange system or heat exchanger for the monitoring interval by multiplying the leak concentration in the cooling water, ppmw, determined in (g)(4)(i) of this section, by the mass flow rate of the cooling water determined in (g)(4)(ii) of this section and by the duration of the delay of repair monitoring interval. The duration of the delay of repair monitoring interval is the time period starting at midnight on the day of the previous monitoring event or at midnight on the day the repair would have had to be completed if the repair had not been delayed, whichever is later, and ending at midnight of the day the of the current monitoring event.

(iv) For delay of repair monitoring intervals ending with a repaired leak, calculate the potential strippable hydrocarbon emissions for the leaking heat exchange system or heat exchanger for the final delay of repair monitoring interval by multiplying the duration of the final delay of repair monitoring interval by the leak concentration and cooling water flow rates determined for the last monitoring event prior to the re-monitoring event used to verify the leak was repaired. The duration of the final delay of repair monitoring interval is the time period starting at midnight of the day of the last monitoring event prior to re-monitoring to verify the leak was repaired and ending at the time of the re-monitoring event that verified that the leak was repaired.

■ 6. Section 63.655 is amended by:
■ a. Revising paragraph (f)(1)(vi);
■ b. Revising paragraph (g)(9);
■ c. Adding paragraph (h)(7); and
■ d. Revising paragraph (i)(4).

The addition and revisions read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) * * *

(1) * * *

(vi) For each heat exchange system, identification of the heat exchange systems that are subject to the requirements of this subpart. For heat exchange systems at existing sources, the owner or operator shall indicate whether monitoring will be conducted as specified in § 63.654(c)(4)(i) or § 63.654(c)(4)(ii).

* * * * *

(g) * * *

(9) For heat exchange systems, Periodic Reports must include the following information:

(i) The number of heat exchange systems at the plant site subject to the monitoring requirements in § 63.654.

(ii) The number of heat exchange systems at the plant site found to be leaking.

(iii) For each monitoring location where the total strippable hydrocarbon concentration was determined to be equal to or greater than the applicable leak definitions specified in § 63.654(c)(6), identification of the monitoring location (e.g., unique monitoring location or heat exchange system ID number), the measured total strippable hydrocarbon concentration, the date the leak was first identified, and, if applicable, the date the source of the leak was identified;

(iv) For leaks that were repaired during the reporting period (including delayed repairs), identification of the monitoring location associated with the repaired leak, the total strippable hydrocarbon concentration measured during re-monitoring to verify repair, and the re-monitoring date (i.e., the effective date of repair); and

(v) For each delayed repair, identification of the monitoring location associated with the leak for which repair is delayed, the date when the delay of repair began, the date the repair is expected to be completed (if the leak is not repaired during the reporting period), the total strippable hydrocarbon concentration and date of each monitoring event conducted on the delayed repair during the reporting period, and an estimate of the potential strippable hydrocarbon emissions over the reporting period associated with the delayed repair.

(h) * * *

(7) The owner or operator of a heat exchange system at an existing source must notify the Administrator at least 30 calendar days prior to changing from one of the monitoring options specified in § 63.654(c)(4) to the other.

(i) * * *

(4) The owner or operator of a heat exchange system subject to this subpart shall comply with the recordkeeping requirements in paragraphs (i)(4)(i) through (v) of this section and retain these records for 5 years.

(i) Identification of all petroleum refinery process unit heat exchangers at the facility and the average annual HAP concentration of process fluid or intervening cooling fluid estimated when developing the Notification of Compliance Status report.

(ii) Identification of all heat exchange systems subject to the monitoring requirements in § 63.654 and identification of all heat exchange systems that are exempt from the monitoring requirements according to the provisions in § 63.654(b). For each heat exchange system that is subject to the monitoring requirements in § 63.654, this must include identification of all heat exchangers within each heat exchange system, and, for closed-loop recirculation systems, the cooling tower included in each heat exchange system.

(iii) Results of the following monitoring data for each required monitoring event:

(A) Date/time of event.

(B) Barometric pressure.

(C) El Paso air stripping apparatus water flow milliliter/minute (ml/min) and air flow, ml/min, and air temperature, °Celsius.

(D) FID reading (ppmv).

(E) Length of sampling period.

(F) Sample volume.

(G) Calibration information identified in Section 5.4.2 of the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14).

(iv) The date when a leak was identified, the date the source of the leak was identified, and the date when the heat exchanger was repaired or taken out of service.

(v) If a repair is delayed, the reason for the delay, the schedule for completing the repair, the heat exchange exit line flow or cooling tower return line average flow rate at the monitoring location (in gallons/minute), and the estimate of potential strippable hydrocarbon emissions for each required monitoring interval during the delay of repair.

* * * * *

[FR Doc. 2013–14624 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412–2517–02]

RIN 0648–XC702

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for Gulf of Mexico Greater Amberjack

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial greater amberjack in the Gulf of Mexico (Gulf) reef fish fishery for the 2013 fishing year through this temporary final rule. Commercial landings for greater amberjack, as estimated by the Science and Research Director (SRD), are projected to reach the commercial ACT (commercial quota) on July 1, 2013. Therefore, NMFS closes the commercial sector for greater amberjack in the Gulf on July 1, 2013, and it will remain closed until the start of the next fishing season, January 1, 2014. This closure is necessary to protect the Gulf greater amberjack resource.

DATES: This rule is effective 12:01 a.m., local time, July 1, 2013, until 12:01 a.m., local time, January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727–824–5305, or email: *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the reef fish fishery of the Gulf, which includes greater amberjack, under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All greater amberjack weights discussed in this temporary rule are in round weight.

The commercial annual catch limit (ACL) for Gulf greater amberjack is 481,000 lb (218,178 kg), as specified in 50 CFR 622.41(a)(1), and the commercial ACT (equivalent to the commercial quota) is 409,000 lb (185,519 kg), as specified in 50 CFR 622.39(a)(1)(v). However, due to an overage of the commercial ACL in 2012, NMFS implemented AMs to reduce the commercial ACT and ACL in 2013. The commercial ACT (commercial quota) was reduced to 338,157 lb (153,385 kg) for 2013 and the commercial ACL was reduced to 410,157 lb (186,044 kg) for 2013 through a temporary rule (78 FR 13284, February 27, 2013).

Under 50 CFR 622.41(a)(1)(i), NMFS is required to close the commercial sector for greater amberjack when the commercial ACT (commercial quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the adjusted 2013 commercial ACT (commercial quota) will be reached by July 1, 2013. Accordingly, the commercial sector for Gulf greater amberjack is closed effective 12:01 a.m., local time, July 1, 2013, until 12:01 a.m., local time, January 1, 2014.

The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having greater amberjack aboard must have landed, bartered, traded, or sold such greater amberjack prior to 12:01 a.m., local time, July 1, 2013. A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, may not possess Gulf reef fish caught under a bag limit, as specified in 50 CFR 622.38(a)(2). During the commercial closure, the bag limit specified in 50 CFR 622.38(b)(1), applies to all harvest or possession of greater amberjack in or from the Gulf EEZ, including the bag limit that may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. During the commercial closure, the possession limits specified in 50 CFR 622.38(c), apply to all harvest or possession of greater amberjack in or from the Gulf EEZ. However, from June 1 through July 31 each year, the recreational sector for greater amberjack is also closed, as specified in 50 CFR 622.34(c), and during this recreational closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero. During the commercial closure, the sale or purchase of greater amberjack taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, July 1, 2013, and were held in cold storage by a dealer or processor.

The 2014 commercial ACT (commercial quota) for greater amberjack will return to 409,000 lb (185,519 kg), as specified at 50 CFR 622.39(a)(1)(v), and the commercial ACL for greater amberjack will return to 481,000 lb (218,178 kg), as specified in 50 CFR 622.41(a)(1)(iii), unless AMs are implemented due to a commercial ACL overage, or the Council takes subsequent regulatory action to adjust the commercial ACT (commercial quota) and commercial ACL.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf greater amberjack component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

This action is taken under 50 CFR 622.41(a)(1) 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.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for greater amberjack constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Additionally, prior notice and opportunity for public comment would be contrary to the public interest. Given the ability of the commercial sector to rapidly harvest fishery resources, there is a need to immediately implement the closure for the remainder of the 2013 fishing year. Taking time to provide prior notice and opportunity for public comment creates a higher likelihood of the reduced commercial ACT (commercial quota) and commercial ACL being exceeded.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: June 17, 2013.

Kelly Denit,

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

[FR Doc. 2013–14745 Filed 6–17–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 119

Thursday, June 20, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. AMS–FV–13–0024; FV13–956–1 CR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon, to determine whether they favor continuance of the marketing order regulating the handling of sweet onions produced in the production area.

DATES: The referendum will be conducted from September 14 through October 4, 2013. To vote in this referendum, producers must have produced Walla Walla sweet onions within the designated production area in Washington and Oregon during the period January 1 through December 31, 2012.

ADDRESSES: Copies of the marketing order may be obtained from the referendum agents at 805 SW. Broadway, Suite 930, Portland, OR 97205, or the Office of the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 805 SW. Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@usda.gov* or *GaryD.Olson@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 956, both as amended (7 CFR Part 956), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted from September 14 through October 4, 2013, among Walla Walla sweet onion producers in the production area. Only Walla Walla sweet onion producers that were engaged in the production of Walla Walla sweet onions in Washington and Oregon, during the period of January 1 through December 31, 2012, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor the continuation of marketing order programs. USDA would consider termination of the order if a majority of the producers voting in the referendum and producers of a majority of the volume of Walla Walla sweet onions represented in the referendum do not favor continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. It has been estimated that it will take an average of 20 minutes for each of the approximately 21 producers of Walla Walla sweet onions in Washington and Oregon to cast a ballot. Participation is voluntary. Ballots postmarked after October 4, 2013, will not be included in the vote tabulation.

Manuel Michel and Gary D. Olson of the Northwest Marketing Field Office, Fruit and Vegetable Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400–900.407).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: June 14, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–14709 Filed 6–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0519; Directorate Identifier 2010–SW–068–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for ECD Model BO105C (C–2 and CB–2 Variants) and BO105S (CS–2 and CBS–2 Variants) helicopters with a certain third stage turbine wheel installed. This proposed AD would require installing a placard on the instrument panel and revising the limitations section of the rotorcraft

flight manual (RFM). This proposed AD is prompted by several incidents of third stage engine turbine wheel failures, which were caused by excessive vibrations at certain engine speeds during steady-state operations. The proposed actions are intended to alert pilots to avoid certain engine speeds during steady-state operations, prevent failure of the third stage engine turbine, engine power loss, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for Germany, has issued EASA AD No. 2010–0128, dated June 25, 2010 (EASA 2010–0128), to correct an unsafe condition for Model BO 105 C, BO 105 D, and BO 105 S helicopters, and certain variants of those models. EASA advises that several failures of third stage turbine wheels used in Rolls Royce Corporation (RRC) 250 series engines have occurred. According to EASA, RRC has determined that detrimental vibrations can occur within a particular range of turbine speeds, and may be a contributing factor to these failures. This condition, if not corrected, could result in loss of engine power, possibly resulting in an emergency landing and injuries to the helicopter occupants. To address this, RRC issued Commercial Engine Bulletin (CEB) A–1400, now at revision 3, for engines with a third stage turbine wheel, part number (P/N) 23065833, installed. CEB A–1400 introduces an operational limitation to avoid engine power turbine (N2) steady-state operation in a speed range between 86.5% and 95.5% for more than 60 seconds in single or cumulative events. In response, ECD has revised the RFM and has provided a placard to inform pilots to avoid steady-state operations between 86.5% and 95.5% turbine speeds.

The EASA AD requires amending the RFMs and installing a placard as described in ECD Alert Service Bulletin No. BO105–60–110, Revision 1, dated March 3, 2010 (ASB BO105).

FAA's Determination

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

Related Service Information

ECD has issued ASB BO105, which contains procedures for installing a placard on the instrument panel stating the prohibited steady-state turbine operating range. Revision 1 of ASB BO105 removed the temporary RFM pages as these changes were included in the most recent revisions of the BO105C/CS and BO105CB/CBS RFMs.

Proposed AD Requirements

This proposed AD would require installing a placard on the instrument panel next to the triple RPM indicator and revising the Operating Limitations sections of the Model BO 105C/CS and BO105 CB/CBS RFMs to limit steady-state operations between speeds of 86.5% and 95.5%.

Costs of Compliance

We estimate that this proposed AD would affect 80 helicopters of U.S. Registry.

Based on an average labor rate of $85 per hour, we estimate that operators may incur the following costs in order to comply with this AD. Amending the RFM would require about 0.5 work-hours, for a cost per helicopter of about $43 and a cost to U.S. operators of $3,440. Installing the decal would require about 0.2 work-hours, and required parts would cost about $5, for a cost per helicopter of $22 and a cost to U.S. operators of $1,760. Based on these estimates, the total cost of this proposed AD would be $65 per helicopter and $5,200 for the U.S. operator fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter Deutschland GmbH (ECD): Docket No. FAA–2013–0519; Directorate Identifier 2010–SW–068–AD.

(a) Applicability

This AD applies to ECD Model BO105C (C–2 and CB–2 Variants) and BO105S (CS–2 and CBS–2 Variants) helicopters with a third stage turbine wheel, part number (P/N) 23065833, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a third stage turbine vibration, which could result in turbine failure, engine power loss and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by August 19, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 30 days:

(1) For BO105C–2 and BO105CS–2 Variant helicopters, revise the Rotorcraft Flight Manual (RFM), Section 2, Limitations Section, by inserting page 2–25 of ECD Flight Manual BO105 C/CS, revision 5.

(2) For BO105CB–2 and BO105CBS–2 Variant helicopters, revise the RFM, Section 2, Limitations Section, by inserting pages 2–8 and 2–27 of ECD Flight Manual BO105 CB/CBS, revision 8.

(3) Install a placard on the instrument panel next to the triple RPM indicator that states:

MIN. CONTINUOUS 98% N_2
MIN. TRANSIENT 95% N_2

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) ECD Alert Service Bulletin No. BO105–60–110, revision 1, dated March 3, 2010, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2010–0128, dated June 25, 2010.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7250: Turbine Section.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14697 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0525; Directorate Identifier 2011–SW–063–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Bell Model 206L, L–1, L–3, and L–4 helicopters. This proposed AD would require measuring each main rotor (M/R) blade spar space to determine whether it is oversized and reidentifying the blade and reducing the life limit of the blade if the spar spacer is oversized. This proposed AD is prompted by the manufacture of certain main rotor blades with an oversized spar spacer and the determination to reduce the life limits of those main rotor blades. The proposed actions are intended to prevent failure of a M/R blade and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

• *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the

online instructions for sending your comments electronically.

- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, email *sharon.y.miles@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

Transport Canada Civil Aviation (TCAA), which is the aviation authority for Canada, has issued AD No. CF–2011–43, dated November 10, 2011, to correct an unsafe condition for Bell Model 206L, L–1, L–3, and L–4 helicopters. TCAA advises that, during manufacturing, some M/R blades were inadvertently fitted with oversized spar spacers, which reduces the life of the blades from 3600 to 2300 hours ''air time.'' As a result, TCCA has mandated procedures to reidentify blades that have oversized spar spacers with new part numbers and reduce the life limitation for such blades.

FAA's Determination

These helicopters have been approved by TCAA and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCAA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Bell issued Alert Service Bulletin No. 206L–09–163, dated November 13, 2009, which specifies inspecting certain M/R blades for oversized spar spacers and reidentifying and reducing the life limit of any blade with an oversized spar spacer from 3600 to 2300 flight hours.

Proposed AD Requirements

This proposed AD would require, within a specified time, measuring the M/R blade spar spacer. If a blade is fitted with an oversized spacer, this AD would require reidentifying the blade, reducing the life limit for the blade from 3,600 hours time-in-service (TIS) to 2,300 hours TIS, and making an entry on the component history card or equivalent record.

Differences between This Proposed AD and the EASA AD

TCAA requires compliance time within 100 hours air time or 30 days; this proposed AD would require compliance within 100 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 688 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It would take about 2.5 work hours to measure the spar spacer and reidentify the blade at $85 per work hour for a total of $213 per helicopter.

According to Bell's service information some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Bell. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada Limited: Docket No. FAA–2013–0525; Directorate Identifier 2011–SW–063–AD.

(a) Applicability

This AD applies to Model 206L, L–1, L–3, and L–4 helicopters with a main rotor (M/R) blade, part number (P/N) 206–015–001–115, –117, –119, or –121, with a serial number (S/N) listed in Table 1 or 2 of Bell Helicopter Alert Service Bulletin No. 206L–09–163, dated November 13, 2009 (ASB), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as the manufacture of a M/R blade with an oversized spar spacer. This condition could result in failure of a M/R blade and subsequent loss of control of the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Actions Required

Within 100 hours time-in-service (TIS):

(1) For each M/R blade with a S/N listed in Table 1 of the ASB, measure the M/R blade spar spacer by following the Accomplishment Instructions, Part II A), paragraphs 1 through 3, of the ASB. If the spar spacer measures more than 1.018 inches (25.86 millimeters), reidentify the blade by following Part II A, paragraph 5.a. and Table 3, of the ASB.

(2) For each M/R blade with a S/N listed in Table 2 of the ASB, measure the M/R blade spar spacer by following the Accomplishment Instructions, Part II B, paragraphs 1 through 3, of the ASB. If the spar spacer measures more than 1.018 inches (25.86 millimeters), reidentify the blade by following Part II B, paragraph 5 and Table 4, of the ASB.

(3) For each reidentified blade, reduce the life limit from 3,600 hours TIS to 2,300 hours TIS, and make an entry on the component history card or equivalent record.

(4) Before further flight, remove any blade that exceeds the new retirement life of 2,300 hours TIS.

(e) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, email *sharon.y.miles@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

The subject of this AD is addressed in Transport Canada Civil Aviation AD CF–2011–41, dated November 10, 2011.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6210 Main Rotor Blades.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14704 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0523; Directorate Identifier 2012–SW–091–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with sliding doors, except those with modification AL.4262. This proposed AD would require removing from service certain part-numbered nuts and washers from the lower ball-joint bolt. This proposed AD is prompted by a report of a sliding door detaching from the helicopter in flight. The proposed actions are intended to prevent loss of the lower ball-joint nut, which could lead to loss of the sliding door and damage to the helicopter.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas

76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2012–0205, dated October 1, 2012 (AD 2012–0205), to correct an unsafe condition for Eurocopter Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with a sliding door installed, except those with modification AL.4262. EASA advises that during a patrol flight with the doors open, the right-hand (RH) sliding door became detached and was lost in-flight. EASA states it was discovered that the nut of the ball-joint bolt was missing, which allowed the ball-joint bolt to detach from the door and the door to ''fall off'' the aircraft. According to EASA, a check of the left-hand (LH) sliding door revealed that the nut of the ball-joint bolt was not tightened, and could be unscrewed by hand. EASA advises that the self-locking characteristics of the nut were lost, possibly due to a defective assembly of the ball-joint bolt by re-using a disposable part or improper nut tightening, and is assumed to be the reason for the ball-joint attachment failure and loss of the sliding door. This failure of the self-locking characteristics of the nut could lead to loss of the sliding door in-flight, potentially resulting in damage of the surrounding helicopter structure and possible injury to persons on the ground. For these reasons, EASA issued AD 2012–0205 to require modification AL.4262, which specifies replacing each nut, part number (P/N) ASN52320BH060N, and washer, P/N 23111AG0LE, with nut, P/N 22542K060, and lock-washer, P/N 23351AC060LE, on the lower ball-joint bolt.

FAA's Determination

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

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. AS350–52.00.34 for Model AS350 B, B1, B2, B3, BA, BB, D, and L1 helicopters and ASB No. AS355–52.00.26 for Model AS355 E, F, F1, F2, N, and NP helicopters, both Revision 0 and both dated July 9, 2012. The ASBs describe procedures to replace the nuts and lock-washers on the LH and RH sliding door lower ball-joint bolts with different part numbered nuts and lock-washers, to ''double lock'' the lower ball-joint bolts. Eurocopter designates the maintenance procedure and design change in its ASBs as modification AL.4262.

Proposed AD Requirements

This proposed AD would require removing from service each nut, P/N ASN52320BH060N, and each washer, P/N 23111AG0LE, within 165 hours time-in-service (TIS) and replacing them with an airworthy nut and washer.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires replacing the lower ball-joint nut and washer within 165 flight hours or 13 calendar months, while this proposed AD would require replacing the affected lower ball joint nut and washer within 165 hours TIS. In addition, this proposed AD would not apply to the Model AS350BB as that helicopter is not type-certificated in the U.S., but it would apply to Models AS350C and AS350D1 because those models have a similar lower ball joint nut and washer.

Costs of Compliance

We estimate that this proposed AD would affect 900 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, replacing the nuts and washers on the sliding doors would require about 1 work-hour, and required parts costs would be minimal, for a cost per helicopter of $85 and a total cost to U.S. operators of $76,500.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2013–0523; Directorate Identifier 2012–SW–091–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with sliding doors installed, except those with modification AL.4262, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as loss of the self-locking feature of the sliding door lower ball-joint nut. This condition could result in detachment of the lower ball-joint bolt from the sliding door and subsequent loss of the sliding door from the helicopter in flight.

(c) Reserved

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 165 hours time-in-service, remove each nut, part number (P/N) ASN52320BH060N, and each washer, P/N 23111AG0LE, from the left-hand and right-hand sliding door lower ball-joint bolts and replace them with an airworthy nut and washer.

(2) Do not install a nut, P/N ASN52320BH060N, or washer, P/N 23111AG0LE, on any sliding door lower ball-joint bolt.

(f) Special Flight Permit

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Eurocopter Alert Service Bulletin (ASB) No. AS350–52.00.34 for Model AS350B, B1, B2, B3, BA, BB and D and L1 helicopters and ASB No. AS355–52.00.26 for Model AS355E, F, F1, F2, N, and NP helicopters, both Revision 0 and both dated July 9, 2012, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2012–0205, dated October 1, 2012.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5200: Doors.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14703 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0524; Directorate Identifier 2012–SW–084–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This proposed AD would require visually inspecting each jettisonable emergency exit window panel (window) for sealant, and removing any sealant that exists in the window's extruded sections. This proposed AD is prompted by jettison tests during routine maintenance inspections that showed the windows failed to jettison. The proposed actions are intended to prevent failure of the windows to jettison, so helicopter occupants can exit the aircraft during an emergency.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601

Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2012–0152, dated August 13, 2012, to correct an unsafe condition for certain Eurocopter Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2 and EC 225 LP helicopters. EASA reports that during required maintenance checks, there have been problems jettisoning emergency exit windows. According to EASA, investigations on several windows showed sealant between the extrusion and the window. ''This condition, if not detected and corrected, could prevent the jettisoning of a window, possibly affecting the evacuation of passengers in the event of an emergency situation,'' EASA states.

FAA's Determination

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

Related Service Information

Eurocopter issued Alert Service Bulletin (ASB) No. AS332–56.00.04 for Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters and ASB No. EC225–56A002 for the EC225LP helicopter, both dated August 8, 2012. Eurocopter advises of difficulties jettisoning the window panel when performing a jettison test due to sealant installed between the extrusion and the window. According to Eurocopter, jettison tests are to be performed every two years. The ASBs provide instructions to inspect each jettisonable window panel to determine whether there is sealant between the extrusion and the window.

Proposed AD Requirements

This proposed AD would require, within 110 hours time-in-service (TIS), visually inspecting each window for sealant between the extrusion and the window. If there is sealant, the AD would require removing the sealant.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to Model AS 332 C1 helicopters, and this proposed AD does not because that model is not FAA type-certificated. The EASA AD requires the inspection of each window within 110 hours TIS or six months, while this proposed AD requires the inspection within 110 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 19 helicopters of U.S. Registry and that labor rates average $85 a work-hour. Based on these estimates, we expect the following costs:

- Visually inspecting the windows for sealant would require 1 work-hour for a labor cost of $85 per helicopter, and $1,615 for the U.S. fleet.
- If needed, removing the sealant from the windows would require 2 work-hours for a labor cost of $170 per window.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France Helicopters: Docket No. FAA–2013–0524; Directorate Identifier 2012–SW–084–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2 and EC225LP helicopters, certificated in any category, that have never undergone a window-jettison test.

(b) Unsafe Condition

This AD defines the unsafe condition as the presence of sealant on an emergency exit window panel. This condition could result in the window failing to jettison, preventing the helicopter occupants from exiting the aircraft during an emergency.

(c) Comments Due Date

We must receive comments by August 19, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless accomplished previously.

(e) Required Actions

Within 110 hours time-in-service (TIS), visually inspect each jettisonable emergency exit window panel (window) by doing the following:

(1) Lift the extrusion slightly using a flat tool that does not cause scoring.

(2) Inspect for sealant on the inside and outside of the window between the window and the extrusion and between the extrusion and the structure.

Note 1 to paragraph (e)(1)(2): The presence of a sealant bead on the extrusion parting lines, on the window pull-out seal parting lines, and on the pull-out straps is expected, as shown in Figure 1 of Eurocopter Alert Service Bulletin No. AS332–56.00.04 or ASB No. EC225–56A002, both dated August 8, 2012 (ASB), as appropriate for your model helicopter.

(3) If there is no sealant as shown in Photo 1 of Figure 2 of the ASB, no further action is required.

(4) If there is sealant between the structure and the profile as shown in Photo 2 of Figure 2 of the ASB or if you cannot determine whether there is sealant, remove the extrusion.

(5) Remove all sealant from the extrusion, the window, and the structure.

(6) If there is any crazing, cracking or other damage on the extrusion, replace with an airworthy extrusion.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Eurocopter ASB No. AS332–56.00.04 and ASB No. EC225–56A002, both dated August 8, 2012, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2012–0152, dated August 13, 2012.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5220, Emergency Exits.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14701 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0526; Directorate Identifier 2008–SW–14–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Model Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Bell Model 206L–4 and 407 helicopters. This proposed AD would require replacing or reworking certain aft bearing caps. This proposed AD is prompted by the manufacture of certain freewheel aft bearing caps without a lubrication channel to allow oil flow into the aft bearing support assembly. The proposed actions are intended to prevent failure of the freewheel unit and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Eric Haight, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76137, telephone (817) 222–5110, email: *eric.haight@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a

report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

Transport Canada Civil Aviation (TCAA), which is the aviation authority for Canada, has issued TCAA AD No. CF–2004–17R1, dated February 11, 2005 (AD No. CF–2004–17R1), which requires replacing or reworking freewheel assemblies on the Bell Model 206L–4 and 407 helicopters. TCAA advises of a manufacturing oversight where a lubrication channel was not machined into the aft bearing cap of some freewheel units to allow oil flow into the aft bearing support assembly. TCAA states that lack of lubrication may adversely affect the durability and potentially the function of the freewheel unit.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCAA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Bell has issued Alert Service Bulletin (ASB) No. 206L–04–129 for the Model 206L–4 and No. 407–04–66 for the Model 407, both Revision A, and both dated December 1, 2004. The ASBs specify identifying the affected freewheel aft bearing caps. The ASBs also provide separate procedures, depending on whether helicopters are ''not exclusively used for training'' or ''exclusively used for training,'' for replacing or reworking the freewheel cap assembly and replacing the output shaft, part number (P/N) 406–040–517–101, and sprag and retainer, P/N 406–040–580–103. TCCA classified these ASBs as mandatory and issued AD No. CF–2004–17R to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require for each affected freewheel assembly, within 50 hours time-in-service (TIS), removing and disassembling the freewheel assembly, replacing the sprag, retainer, and the aft seal and visually inspecting the remaining freewheel part details for a missing channel. Also, the proposed AD would require, if the channel is missing, before further flight, replacing the cap assembly with an airworthy cap or reworking and reidentifying the existing cap by using a vibrating stylus to add the letter ''R'' to the serial number of the reworked cap. Reworking or replacing the affected cap assembly is terminating action for the requirements of this AD.

Differences Between This Proposed AD and the TCAA AD

This proposed AD differs from the TCAA AD as follows:

- We would not use a calendar time, which has already passed.
- We would require all affected helicopters to comply within 50 hours TIS; the TCAA AD has different compliance times as stipulated by the calculated average engine start cycle count identified in the applicable ASB, and a 300-hour TIS terminating action for modifying all affected helicopters.
- We would not require referencing compliance with the ASBs as does the TCAA AD, and we would not require you to provide an affected cap for rework to Bell Tennessee nor require the original cap to be reworked by Bell Tennessee.
- We would not require any action on ''spare'' parts before installation on a helicopter but would require before installing any replacement bearing support assembly, ensuring that the rework has been done.

Costs of Compliance

We estimate that this proposed AD would affect 212 Model 206L–4 helicopters and 540 Model 407 helicopters of U.S. registry; however, we estimate that only 80 helicopters are affected. We estimate that operators may incur the following costs in order to comply with this AD: It would take about 16 work hours to replace the freewheel unit for all the affected parts at an average labor rate of $85 per work hour. Required parts would cost about $21,600 per helicopter. Based on these figures, we estimate the total cost per helicopter would be $22,900 and the total cost of the proposed AD on U.S. operators would be $1,836,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada: Docket No. FAA–2013–0526; Directorate Identifier 2008–SW–14–AD.

(a) Applicability

This AD applies to Model 206L–4 and 407 helicopters, with a freewheel aft bearing cap (cap), part number (P/N) 406–040–509–101, with a serial number with a prefix of ''A–'' and Nos. 1833 through 1912, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as certain caps being manufactured without a lubrication channel to allow oil flow into the aft bearing support assembly, which could result in failure of the freewheel unit and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by August 19, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 50 hours time-in-service (TIS):

(1) Remove and disassemble each freewheel assembly.

(2) Replace the sprag and retainer (item 7), the output shaft (item 10), and the aft seal (item 3), as depicted in Figure 2 of Bell Alert Service Bulletin (ASB) No. 206L–04–129 for the Model 206L–4 and ASB No. 407–04–66 for the Model 407, both Revision A, and both dated December 1, 2004.

(3) Visually inspect the remaining freewheel part details for a missing channel.

(4) If the channel is missing, replace or rework the cap assembly by following the instructions depicted in Figure 3 of ASB 206L–04–129 or ASB 407 04–66, as applicable for your model helicopter. Using a vibrating stylus, mark the letter ''R'' at the end of the serial number on the cap assembly.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Eric Haight, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76137, telephone (817) 222–5110, email: *eric.haight@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in Transport Canada Civil Aviation AD No. CF–2004–17R1, dated February 11, 2005.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6300: Main Rotor Drive System.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14693 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0514; Directorate Identifier 2012–SW–068–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Sikorsky Model S–76A, B, and C helicopters to require certain inspections of each spindle cuff assembly or blade fold cuff assembly for a crack. If there is a crack, this proposed AD would require replacing the cracked part. If there is no crack, this AD would require applying white paint to the inspection area to enhance the existing inspection procedure. This proposed AD is prompted by the discovery of cracks in the spindle cuffs. The proposed actions are intended to prevent failure of a spindle cuff assembly or blade fold cuff assembly, loss of a rotor blade, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com*; or at *http://www.sikorsky.com; http://www.eurocopter.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7763; email *nicholas.faust@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are

filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Sikorsky Model S–76A, B, and C helicopters. This proposed AD would require, depending on the hours time-in-service (TIS) of each part, either a one-time nondestructive inspection (NDI) or a visual inspection of each spindle cuff assembly or blade fold cuff assembly for a crack. If there is a crack, this proposed AD would require replacing the cracked part. If there is no crack, this proposed AD would require applying white paint to a portion of each spindle cuff assembly or blade fold cuff assembly lower cuff plate to enhance the existing inspection procedure. This proposed AD is prompted by the discovery of five cracked spindle cuffs found during aircraft overhaul. The proposed actions are intended to prevent failure of a spindle cuff assembly or blade fold cuff assembly, loss of a rotor blade, and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Sikorsky issued S–76 Alert Service Bulletin ASB 76–65–67A, Revision A, dated July 18, 2012 (ASB), which specifies performing an NDI of the upper and lower cuff plate on each spindle cuff assembly or blade fold cuff assembly for a crack, either by eddy current, fluorescent penetrant, or ultrasonic inspection. If a crack indication is detected and not verified, the ASB specifies performing a different NDI to verify a crack. If there is a crack, the ASB specifies removing the spindle cuff assembly or blade fold cuff assembly from service. If a crack cannot be verified, the ASB specifies contacting Sikorsky for further instruction. Finally, if no crack is found, the ASB specifies applying white paint to a portion of the spindle cuff assembly or blade fold cuff assembly lower cuff plate to enhance the existing inspection procedure.

Proposed AD Requirements

This proposed AD would require within 150 hours TIS:

- For each spindle cuff assembly or blade cuff assembly with 1,900 or more hours TIS, conducting an NDI by a qualified inspector by following specified portions of the ASB.
- For each spindle cuff assembly or blade cuff assembly with less than 1,900 hours TIS, visually inspecting each white paint application area for a crack by using a 5x or higher power magnifying glass.
- If there is a crack, before further flight, replacing each cracked spindle cuff assembly or cracked blade fold cuff assembly with an airworthy assembly.
- If there is no crack, applying white paint by following specified portions of the ASB.

This proposed AD also prohibits installing an affected spindle cuff assembly or blade cuff fold assembly on any helicopter unless it has been inspected in accordance with the requirements of this AD.

Differences Between This Proposed AD and the Service Information

The ASB specifies contacting the manufacturer if suspect cracks are not confirmed in the spindle cuff assembly or blade fold cuff assembly; this proposed AD would not require contacting the manufacturer. This proposed AD applies to spindle cuff assembly, part number (P/N) 76102–08001–043, which was inadvertently omitted in the ASB. The manufacturer has stated that they will issue an ASB in the future that will also apply to this spindle cuff assembly. The ASB applies to spare parts; this proposed AD does not.

Costs of Compliance

We estimate that this proposed AD would affect 181 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD, based on an average labor cost of $85 per work hour: It would take 2.5 work hours to do an NDI and 2 work hours to apply the white paint. It would cost $15 in materials for the paint for each helicopter. Based on these estimates, it would cost a total of $398 per helicopter and $72,038 for the fleet.

If it is necessary to replace a spindle cuff assembly or a blade cuff assembly, it would take 2.5 work hours and an estimated parts cost of $54,000, for a total cost of $54,212 for each helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. FAA–2013–0514; Directorate Identifier 2012–SW–068–AD.

(a) Applicability

This AD applies to Model S–76A, S–76B, and S–76C helicopters with a serial number up to and including 760822 and with a spindle cuff assembly, part number (P/N) 76102–08001–043, –045 or –046, or a blade fold cuff assembly, P/N 76150–09601–041, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a spindle cuff assembly or blade fold cuff assembly. This condition could result in failure of a spindle cuff assembly or blade fold cuff assembly, loss of a rotor blade, and subsequent loss of control of the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

Within 150 hours time-in-service (TIS):

(1) For each spindle cuff assembly or blade cuff assembly with 1,900 or more hours TIS, conduct a nondestructive (NDI) inspection by following the Accomplishment Instructions, paragraph 3.B., of Sikorsky S–76 Alert Service Bulletin ASB 76–65–67A, Revision A, dated July 18, 2012 (ASB), except this AD does not require you to contact Sikorsky Aircraft Corporation. This inspection must be done by a level 2 or higher technician with National Aerospace Standard 410 or equivalent certification.

(2) For each spindle cuff assembly or blade cuff assembly with less than 1,900 hours TIS, visually inspect the area indicated in Figure 4 of the ASB as ''white paint application area'' for a crack by using a 5x or higher power magnifying glass.

(3) If there is a crack, before further flight, replace the cracked part.

(4) If there is no crack, apply white paint by following the Accomplishment Instructions, paragraph 3.D., of the ASB.

(5) Do not install an affected spindle cuff assembly or blade fold cuff assembly on any helicopter unless it has been inspected in accordance with paragraphs (d)(1) through (d)(4) of this AD.

(e) Special Flight Permit

Special flight permits will not be issued.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Nicholas Faust, Aviation Safety Engineer, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7763; email *nicholas.faust@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com*; or at *http://www.sikorsky.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6220 Main Rotor Head.

Issued in Fort Worth, Texas, on June 12, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14699 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0518; Directorate Identifier 2009–SW–021–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Type Certificate Currently Held by AgustaWestland S.p.A) (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Agusta Model A109A, A109AII, and A109C helicopters with a certain third stage turbine wheel installed. This proposed AD would require installing a placard on the instrument panel and revising the limitations section of the rotorcraft flight manual (RFM). This proposed AD is prompted by several incidents of third stage engine turbine wheel failures, which were caused by excessive vibrations at certain engine speeds during steady-state operations. The proposed actions are intended to alert pilots to avoid certain engine speeds during steady-state operations, prevent failure of the third stage engine turbine, engine power loss, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for Italy, has issued EASA AD No. 2009–0037–E, dated February 19, 2009, to correct an unsafe condition for Agusta Model A109A, A109AII, and A109C helicopters with a Rolls Royce Corporation (RRC) engine Model 250–C20B or 250–C20R/1 having a third stage turbine wheel part number (P/N) 23065833 installed. EASA advises that following several third stage turbine wheel failures, the engine type certificate holder, RRC, issued Commercial Engine Bulletin (CEB) A–1400 Revision 3, dated January 19, 2009 (CEB A–1400), to introduce an operational limitation on the power turbine (N2) speed range (95% to 97%) for more than 60 seconds in single or cumulative events for engines with the third stage turbine wheel P/N 23065833 installed.

The EASA AD requires amending the RFMs and installing a placard as described in Agusta Bollettino Tecnico No. 109–129, dated February 16, 2009 (BT 109–129). The EASA AD also states to avoid steady-state operation in the 95% to 97% N2 range for more than 60 seconds, and requires the corrective actions of CEB A–1400 if that limitation is exceeded.

FAA's Determination

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

Related Service Information

Agusta has issued BT 109–129, which contains procedures for installing a placard on the instrument panel below or near the engine and rotor RPM power turbine (N2) indicator and for inserting the RFM changes into the flight manual.

Proposed AD Requirements

This proposed AD would require installing a placard on the instrument panel adjacent to the engine and rotor RPM power turbine (N2) indicator and revising the Operating Limitations sections of the Model A109A, A109AII, and A109C RFMs to limit steady-state operations between speeds of 95% and 97%.

Costs of Compliance

We estimate that this proposed AD would affect 40 helicopters of U.S. Registry. Based on an average labor rate of $85 per hour, we estimate that operators may incur the following costs in order to comply with this AD. Amending the RFM would require about 0.25 work-hour, for a cost per helicopter of about $22 and a cost to U.S. operators of $880. Installing the decal would require about 0.2 work-hours, and required parts would cost about $5, for a cost per helicopter of $22 and a cost to U.S. operators of $880. Based on these estimates, the total cost of this proposed AD would be $44 per helicopter and $1,760 for the U.S. operator fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Agusta S.p.A. (Type Certificate Currently Held By Agustawestland S.p.A.) (Agusta): Docket No. FAA–2013–0518; Directorate Identifier 2009–SW–021–AD.

(a) Applicability

This AD applies to Agusta Model A109A, A109AII, and A109C helicopters with a third stage turbine wheel, part number 23065833, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a third stage turbine vibration, which could result in turbine failure, engine power loss, and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by August 19, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 30 days:

(1) For Model A109A helicopters, revise the Power Plant Limitations section, page 1–7, of the Model A109A Rotorcraft Flight Manual (RFM) by inserting page 5 of Agusta Bollettino Tecnico No. 109–129, dated February 16, 2009 (BT 109–129).

(2) For Model A109AII helicopters, revise the Power Plant Limitations section, page 1–6, of the Model A109A RFM by inserting page 6 of BT 109–129.

(3) For Model A109C helicopters, revise the Power Plant and Transmission Limitations section, page 1–8, of the Model A109A RFM by inserting page 7 of BT 109–129.

(4) Install a placard on the instrument panel adjacent to the Engine and Rotor RPM Power Turbine (N2) Indicator that states:

MIN. CONT. 97% N_2—MIN. TRANS. 95% N_2

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2009–0037–E, dated February 19, 2009.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7250: Turbine Section.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14694 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113; Docket ID: BIA–2013–0005]

RIN 1076–AF15

Land Acquisitions: Appeals of Land Acquisition Decisions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; Correction.

SUMMARY: The Bureau of Indian Affairs (BIA) published a proposed rule in the **Federal Register** of May 29, 2013, announcing the proposed rule to revise a section of regulations governing decisions by the Secretary to approve or deny applications to acquire land in trust under 25 CFR part 151. This document makes corrections to the **ADDRESSES** section to provide the mail and hand delivery addresses.

DATES: Comments on this rule must be received by July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Acting Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov*.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Mail and Hand Delivery address provided under the **ADDRESSES** section did not provide the full address. In proposed rule FR Doc. 2013–12708, published in the issue of May 29, 2013, make the following correction. On page 32214, third column, correct the **ADDRESSES** section to read as follows:

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2013–0005.

—*Email: consultation@bia.gov.* Include the number 1076–AF15 in the subject line of the message.

—*Mail:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 4141—MIB, Washington, DC 20240. Include the number 1076–AF15 in the submission.

—*Hand Delivery:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 4141–MIB, Washington, DC 20240. Include the number 1076–AF15 in the submission.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

Dated: June 11, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–14696 Filed 6–19–13; 8:45 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2004–0489; FRL–9795–9]

RIN 2060–AR29

Revisions to the Air Emissions Reporting Requirements: Revisions to Lead (Pb) Reporting Threshold and Clarifications to Technical Reporting Details

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action proposes changes to the existing EPA emission inventory reporting requirements on state, local, and tribal agencies in the current Air Emissions Reporting Requirements rule published on December 17, 2008. The proposed amendments would lower the current threshold for reporting Pb sources as point sources; eliminate the requirement for reporting emissions from wildfires and prescribed fires; and replace a requirement for reporting mobile source emissions with a requirement for reporting the input parameters that can

be used to run the EPA models that generate the emissions estimates. In addition, the proposed amendments would reduce the reporting burden on state, local, and tribal agencies by removing the requirements to report daily and seasonal emissions associated with carbon monoxide (CO), ozone (O_3), and particulate matter up to 10 micrometers in size (PM_{10}) nonattainment areas and nitrogen oxides (NO_X) State Implementation Plan (SIP) call areas, although reporting requirements for those emissions would remain in other regulations. Lastly, the proposed amendments would clarify, remove, or simplify some current emissions reporting requirements which we believe are not necessary or are not clearly aligned with current inventory terminology and practices.

DATES: Comments must be received on or before August 19, 2013. Under the Paperwork Reduction Act, comments on the information collection request must be received by EPA and OMB on or before July 22, 2013.

The EPA will hold a public hearing on today's proposal only if requested by July 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0489, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air Emissions Reporting Requirements Rule, Docket No. EPA–HQ–OAR–2004–0489, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2004–0489, EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0489. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment as well as with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Emissions Reporting Requirements Rule Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Ryan, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Emission Inventory and Analysis Group (C339–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–4330; email: *ryan.ron@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this action include:

Category	NAIC code [a]	Examples of regulated entities
State/local/tribal government	92411	State, territorial, and local government air quality management programs. Tribal governments are not affected, unless they have sought and obtained treatment as state status under the Tribal Authority Rule and, on that basis, are authorized to implement and enforce the Air Emissions Reporting Requirements rule.

[a] 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 action.[1] This action requires states to report their emissions to us. It is possible that some states will require facilities within their jurisdictions to report emissions to the states. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 51.1. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Expedited Review.* To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Mr. Ron Ryan, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Emission Inventory and Analysis Group, Mail Code C339–02, Research Triangle Park, NC 27711; telephone: (919) 541–4330; email: *ryan.ron@epa.gov.*

2. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark any of the information that you claim to be CBI. For CBI information in 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 comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

3. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/chief/.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–4814.

D. Will there be a public hearing?

The EPA will hold a public hearing on today's proposal only if requested by July 1, 2013. The request for a public hearing should be made in writing and addressed to Mr. Ron Ryan, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Emission Inventory and Analysis Group, Mail Code C339–02, Research Triangle Park, NC 27711. The hearing, if requested, will be held on a date and at a place published in a separate **Federal Register** notice.

II. Background and Purpose of This Rulemaking

The EPA promulgated the Air Emissions Reporting Requirements (AERR) in the **Federal Register** at 73 CFR 76539, on December 17, 2008, in order to consolidate and harmonize the emissions reporting requirements of the NO_X SIP Call (40 CFR 51.122) and the Consolidated Emissions Reporting Rule (40 CFR part 51, subpart A) with the needs of the Clean Air Interstate Rule (CAIR). These amendments are being proposed to align the AERR with the National Ambient Air Quality Standard for Lead (73 FR 66964, November 12, 2008) and the associated Revisions to Lead Ambient Air Monitoring Requirements (75 FR 81126), and because use of the previous AERR over the past few years has revealed needed improvements that will both reduce burden on states and local air agencies as well as make minor technical corrections that reflect what has been put into practice through existing electronic reporting implementation.

The proposed amendments would lower the current threshold for reporting stationary Pb sources as point sources to align with and support the requirements of the 2008 revisions to the National Ambient Air Quality Standard for Lead (73 FR 66964, November 12, 2008) and the associated Revisions to Lead Ambient Air Monitoring Requirements (75 FR 81126) for source-oriented monitors.

The proposed amendments would also clarify, remove, or simplify some emissions reporting requirements in the current AERR which we believe are not necessary or are not clearly aligned with current inventory terminology and practices. Most of these clarifications are revisions to the names of the specific data elements reported to promote consistency with the element names as implemented in the electronic reporting schema used by the Emission Inventory System (EIS).

As this requirement was unclear in the current AERR, we are proposing to eliminate the requirement for reporting emissions from wildfires and prescribed fires, clarifying that they may be optionally reported using only the final design implemented in EIS for those two source categories.

We are also proposing to replace a requirement that state and local agencies submit mobile source emissions with a new requirement to report the input parameters that can be used to run the EPA models that generate the emissions estimates.

To reduce the reporting burden on state and local agencies, we are proposing to remove the requirements to submit daily and seasonal emissions values.

To promote consistency with terminology used in the EIS and to remove several items proposed to become optional rather than required,

[1] As prescribed by the Tribal Authority Rule (63 FR 7253, February 12, 1998), codified at 40 CFR part 49, subpart A, tribes may elect to seek Treatment as State (TAS) status and obtain approval to implement rules such as the AERR through a Tribal Implementation Plan (TIP), but tribes are under no obligation to do so. However, those tribes that have obtained TAS status are subject to the AERR to the extent allowed in their TIP. Accordingly, to the extent a tribal government has applied for and received TAS status for air quality control purposes and is subject to the AERR under its TIP, the use of the term state(s) in the AERR shall include that tribal government.

we are proposing to revise and simplify three tables to subpart A of part 51.

III. Proposed Revisions to Emissions Reporting Requirements

A. Lower Point Source Threshold for Lead Emitters

The current AERR threshold for determining if a stationary source of Pb emissions must be reported as an individual point source rather than as part of a county-aggregate nonpoint source, is 5 tons per year (tpy). As with the other required pollutants, that threshold determination is based on potential to emit, although the emissions reported are the actual emissions. In 2010, the EPA finalized the Revisions to Lead Ambient Air Monitoring Requirements rule (75 FR 81126), which required monitoring agencies to install and operate source-oriented ambient monitors near Pb sources emitting 0.50 tpy or more by December 27, 2011. The EPA is proposing to lower the AERR emissions threshold for reporting Pb emitters to match the 0.50 tpy threshold in the revised ambient air monitoring requirements. This would allow the EPA to evaluate and provide proper oversight of the ambient monitoring network design finalized in the revised ambient air monitoring requirements. The EPA expects that only about 30 additional facilities nationwide would be required to be reported as point sources due to this change, since most of the sources emitting Pb greater than 0.5 tpy are already reported as point sources due to their emissions of other criteria pollutants. The current AERR already requires all criteria pollutants (including Pb) to be reported for a facility that emits any one criteria pollutant greater than the relevant threshold.

B. Elimination of Reporting for Wildfires and Prescribed Fires and Clarification for Reporting Agricultural Fires

The current AERR requires states to report emissions from wildfires and agricultural fires as either point or nonpoint sources, with the point source method being encouraged. The current AERR does not explicitly mention prescribed fires, but a review of both **Federal Register** notices proposing and finalizing the AERR (71 FR 69 and 73 FR 76539, respectively) indicate that the intent was to require wildfires and prescribed fires to be reported as either point or nonpoint sources, with no explicit mention of agricultural fires. In addition to correcting this erroneous switching of agricultural fires for the intended prescribed fires, the EPA is also proposing to eliminate the requirement for wildfires and prescribed fires to be reported by states. The EPA already provides nationwide estimates for wildfires and prescribed fires using information it has, so requiring states to also report these data is not necessary. States are encouraged to review and comment on the EPA's estimates, or to report their own estimates if they so choose. In addition, we propose to clarify that reporting of these two fire types can only be made via the Events source type. Events is a new source reporting format created in the EIS data system to accommodate the day-specific emission details needed for the NEI to accurately reflect these large-scale, but short-term, emission events. We also propose to clarify that agricultural fires continue to be required to be reported, but as nonpoint sources only. Agricultural fires cannot be reported as point sources, and we are unaware of any state that wishes to do so.

C. Reporting Emission Model Inputs for Onroad and Nonroad Sources

We are proposing to replace the current requirement for states to report emissions for onroad and nonroad sources with a requirement that they report the input parameters that can be used in the EPA models to generate the emissions values. Reporting the emissions values would become voluntary. California and tribal agencies must continue to report emissions rather than model inputs because the EPA models are not applicable to California, and the county-specific inputs required by EIS for these models are not applicable to tribal areas. We are also proposing that in lieu of submitting any data, states may accept the EPA's emission estimates for mobile sources. States are encouraged to review and comment on the EPA's estimates and inputs.

As the states are already required to use the EPA models, the inputs needed to run those models are already available for submission. We expect that there will be less burden on the states to report the model inputs rather than the resultant emissions values, as the model input files are much smaller and more manageable than the output emission files. The current AERR allows states the option to report the model inputs in lieu of the emissions values. Nineteen states submitted some model inputs for the 2008 NEI.

Requiring states to provide model inputs rather than only the resultant emissions values will also reduce the costs and improve the accuracy and timeliness of the EPA's air quality planning efforts. Having the model inputs allows the EPA to use the latest version of the applicable models to generate the most accurate emission outputs. Requiring reporting of the model inputs also allows the EPA to generate consistent base year and future year emission estimates that are necessary for performing accurate benefits estimates for proposed regulations.

D. Removal of Requirements To Report Daily and Seasonal Emissions

In addition to requiring all states to report annual emissions for all source types on a triennial cycle, the current AERR also requires the reporting of daily or seasonal emissions to be reported for a subset of geographic areas. States subject to the NO_X SIP Call are required by the AERR to report 5-month O_3 season and summer day NO_X emissions every year, and summer day NO_X and volatile organic compound (VOC) emissions every third year. States with an 8-hour O_3 nonattainment area are required by the AERR to report summer day NO_X and VOC emissions for all counties that were covered by the nonattainment area modeling domain that was used to demonstrate Reasonable Further Progress (RFP) every third year. States with CO nonattainment areas and states with CO attainment areas subject to maintenance plans are required by the AERR to report winter work weekday CO emissions every third year. The underlying needs for these daily and seasonal emissions values are derived from requirements in the NO_X SIP Call rule, the O_3 NAAQS Implementation rule, and the CO NAAQS Implementation rule, respectively.

We are proposing to delete all of the daily and seasonal emissions reporting requirements from the AERR and to replace those requirements with statements that the states can choose to meet the underlying periodic inventory reporting requirements of those three other rules by reporting via the AERR. The current O_3 and CO NAAQS Implementation rules, and the proposed changes to the NOx SIP Call, would continue to require states to report the emissions in a format and on a schedule as required by those rules to ensure compliance with those rules. Each of the three underlying rules already requires states to show and track consistency with the emissions projections contained in approved SIP submissions, and also contains requirements for public review of SIP revisions. Given these specific requirements in individual rules, the EPA believes that also requiring submittal of these daily and seasonal emissions values in a

format and under a schedule prescribed by the existing AERR and the EIS data system can be unfeasible in practice and is likely to introduce significant inaccuracies and confusion. In addition, the periodic emissions data and documentation that states are required to submit to their EPA Regional Offices under the two existing NAAQS implementation rules and the proposed changes to the NOx SIP Call are sufficient to demonstrate compliance with those rules and, thus, make the existing AERR requirement unnecessary.

E. Revisions To Simplify Reporting and Provide Consistency With EIS

The AERR was finalized on December 17, 2008, prior to the finalization of the design details of the EIS data system that is used to collect and store the required data. As a result, the EPA is proposing a number of changes to provide consistency between the AERR reporting mechanism and the EIS data collection system and, thus, simplify emissions reporting. There were a number of inconsistencies between the AERR and the EIS data system in the terminology used for some data elements. Some compound data elements in the AERR were separated into more discrete and less ambiguous elements in the EIS. In addition, a few data elements necessary for inclusion in the EIS data system, in order to fully describe related required data elements, were not explicitly listed in the AERR, and some AERR data elements that were listed as required for state reporting have since been determined to be obtainable by the EPA by other methods. The proposed removal of requirements to report the O_3 and CO typical day SIP emissions and the NOx SIP Call seasonal emissions, via this AERR reporting mechanism and the EIS data system as described above, make it necessary to remove several other data elements from the AERR requirements, although they are still available in the EIS as optional data elements.

1. Revised Formats for Appendix A Tables

The EIS data system was designed such that data elements that had not changed from one reporting period to the next need not be re-submitted. Only data elements that have changed need be reported. This streamlined reporting structure, along with the terminology changes, requirements deletions, and other consistency revisions described above, created a need for the EPA to revise Tables 1, 2a, 2b and 2c in Appendix A of the AERR. Table 1 still defines the emissions thresholds that determine the Type A point source emissions required to be reported each year. In addition, it now includes the thresholds used to determine the Type B sources required to be reported as point sources every third year. These Type B point source thresholds had previously been included as part of the definition of the term ''point source.'' In the revised Table 1, we have clarified the name of the two PM pollutants by including ''primary.'' This is consistent with the existing list of required pollutants described in § 51.15.

Table 2a has been revised to include only the point source facility inventory data elements that are required to be in EIS, without regard to either the every-year or triennial reporting cycles, since these elements need only be reported for any new point source or when any change occurs at an existing point source. The emissions data element requirements for point sources from Table 2a have been combined with the emissions requirements for the other three emissions source types in Table 2b. The need for Table 2c is eliminated by the proposed revisions to Table 2b. We have also eliminated the separate columns for ''Every-year reporting'' and ''Three-year reporting'' from Tables 2a and 2b. Those reporting cycle distinctions were only applicable to Type A point sources, and with the proposed revisions, Table 1 now describes all of the necessary distinctions.

2. Addition of New Facility Inventory Elements

For the Facility Inventory data elements listed in Table 2a, which need to be reported only for new point sources or when a change occurs, we are proposing to add new operating statuses to the AERR: Facility Site Status, Release Point Status, and Unit Status, along with the year in which any of these three items changes from ''Operating'' to some other status. These operating statuses are used by the states to indicate whether emissions reports should continue to be expected for a facility, emissions unit, or release point, or the reason why emissions will not be reported after the year indicated.

We are also proposing to add Aircraft Engine Type, Unit Type, and Release Point Apportionment Percent to the Facility Inventory data elements listed in Table 2a. Aircraft Engine Type is a code that provides a further level of detail of the existing required element Source Classification Code (SCC), which describes the emitting processes. The Aircraft Engine Type code is one of the inputs to the emissions estimation model that is used to estimate aircraft emissions during landing and take-off cycles. The EPA does not require states to report aircraft engine emissions as point sources, but, instead, produces its own set of aircraft engine estimates and provides states the opportunity to comment on those estimates and to submit their own estimates if they choose. If states choose to submit their own estimates, they would have to provide the Aircraft Engine Type code along with the SCC in order to completely specify the emitting process.

Unit Type is a data element added to the EIS to more easily and explicitly identify the type of emission unit producing the emissions than can be inferred from the SCC. The EPA populated the Unit Type field in the original version of the EIS Facility Inventory using the SCC code. It is expected that states will know the Unit Type for any new emission units that they add, but they do have an option to report an ''unclassified'' type. To reduce burden, we are also proposing to limit the existing requirement for reporting the Unit Design Capacity for all units to only reporting capacities for a limited number of key unit types. The Unit Type element is necessary for the EIS data system to be able to make the distinction of when unit design capacity would still be required.

Release Point Apportionment Percent is a data element added to the EIS at the request of some state reporters. The previous data system allowed a given emission process to exhaust to only a single release point. However, the EIS data system allows states the option to split the emissions from a single emission process to as many release points as desired by reporting the percentage going to each release point. The vast majority of processes exhaust 100 percent to a single release point. The EPA populated the original version of the EIS Facility Inventory using this value, which was the only possible interpretation from the previous data system and reports. Although the current reporting rule does not explicitly list a data element, it was always necessary for states to indicate the release point that each process exhausted through, and the 100 percent was assumed. This new data element is necessary to support the new option in EIS that allows for more than one release point to be specified by the state.

3. Addition of New Emissions Elements

For the Emissions data elements listed in Table 2b, we are proposing to add five new items, four of which we believe to be minor extensions or clarifications of existing requirements necessary to avoid ambiguity in the EIS data system.

The EPA believes that these new items will not add any new information collection burden. The four items are: Shape Identifiers, Emission Type, Reporting Period Type, and Emission Operating Type. Shape Identifiers are a more detailed method of identifying the geographic area for which emissions are being reported than the entire county for nonpoint sources. The EPA believes that they are needed for a small number of nonpoint sources, such as rail lines, ports, and underway vessels, which occur only in a small and identifiable portion of a full county. Although states are still required to report emissions for these sources, we are also proposing to add language to the AERR to allow states to meet the requirements for reporting some of their nonpoint sources by accepting the EPA's estimates for the sources for which the EPA makes calculations. For the nonpoint sources needing the more geographically-detailed emissions, the EPA has provided tables describing the geographic entities and their identifiers and has also estimated emissions for each of the entities. The EPA provides states the opportunity to comment on the EPA estimates and to submit their own estimates if they choose. If states choose to submit their own estimates, they would have to provide the extra geographic detail described by the Shape Identifiers.

Emission Type is a code that is a further level of detail of the existing required element SCC, which identifies the emitting processes. Note that we are also proposing to revise the definition of this term in § 51.50, since the existing definition actually describes the Reporting Period Type and not the Emission Type.

Reporting Period Type is a code that identifies whether the emissions being reported are an annual total or one of the seasonal or daily type emissions that we are proposing to make optional, although they may still be required as part of the state's own SIP rules. The current AERR includes reporting of this code for point sources using the erroneous name Emission Type in Table 2a. Although neither Emission Type nor Reporting Period Type terms appear in the current Tables 2b or 2c for the nonpoint, nonroad or onroad sources, we believe this information is inherent in the separate listing of annual, seasonal, and daily emissions in those tables. While we are proposing to remove all except the annual emissions from the requirements, it will still be necessary for data submitters to identify the emissions as annual, given that the data system will be able to optionally accept the other reporting types.

Emission Operating Type is required only for point source emissions. It is similarly necessary in order for the data system to distinguish between the minimally required emissions and the other optional operating types that the data system can also accept.

The fifth new item proposed to be added to the Table 2b emissions requirements is the Emissions Calculation Method. We are proposing this element to be required for point and nonpoint sources. It is a code which indicates how each emissions value was estimated or determined (e.g., by continuous emissions monitor or by stack test or by an average emission factor). The EPA believes this item is needed to evaluate the adequacy of any emissions value for the stated purposes of the NEI and to be able to select the most reliable emissions value where more than one is available to us. State reporters should have this information available to them in some form and should be able to add it to their electronic submittals with a minimal amount of added burden.

4. Clarification of Element Names and Usage for Controls

We are proposing to revise the data element names and clarify the usage conventions for four data elements related to emissions control devices for the point source facility inventory items. AERR Table 2a currently indicates these four elements as being required in the triennial reporting cycle: Primary Capture and Control Efficiencies; Total Capture and Control Efficiency; Control Device Type; and Rule Effectiveness. However, the EIS data system has separated the single element of Total Capture and Control efficiency into its two separate components, which the EIS names Percent Control Approach Capture Efficiency and Percent Control Measures Reduction Efficiency. The EPA believes that reporters would have to know or estimate these two items separately before combining them to report the current Total Capture and Control Efficiency element. Also, the control efficiency portion of the current element and, therefore, the combined Total, would be different for each pollutant controlled. This is indicated in the current element name Primary Capture and Control Efficiencies, which refers to only the control achieved by the primary, or first of potentially several control devices used on an emission process, along with the hood capture efficiency. The EPA does not believe that state reporters can reasonably estimate the separate control reduction efficiencies of each control device where more than one control device is used. For these reasons, we propose to eliminate the Primary Capture and Control Efficiencies element, and to split the Total Capture and Control Efficiency into a single Percent Control Approach Capture Efficiency along with a Percent Control Measures Reduction Efficiency for each pollutant controlled. In addition, although the current AERR does not explicitly require reporting of the pollutants being controlled, we believe the only reasonable interpretation of the existing requirement for reporting control efficiencies is for the pollutants controlled to be indicated with their efficiencies. We are, therefore, proposing to explicitly list a new data element Control Pollutant. Related to these emission control elements, we propose to revise the name of current AERR required elements Control Device Type and Rule Effectiveness to Control Measure and Percent Control Approach Effectiveness, respectively.

We are also proposing similar terminology and usage conventions for the nonpoint sources emission control data elements. As proposed, the element Total Capture and Control Efficiency would be renamed to Percent Control Measures Reduction Efficiency, and Rule Effectiveness would be renamed Percent Control Approach Effectiveness, consistent with the point source names. The existing required element for nonpoint sources named Rule Penetration would be renamed Percent Control Approach Penetration. We are also proposing to add the elements Control Measure and Control Pollutant. As with point sources, we believe the identification of the controlled pollutants is inherent in the requirement to report control reduction efficiency, which is a pollutant-specific value. Identification of the control measures for nonpoint sources is a new requirement that the EPA believes would not add significant burden, given the existing requirement to report control reduction efficiencies where they exist.

5. Revisions to Other Facility Inventory Element Names

We are proposing revisions to some of the terms in point source facility inventory Table 2a to clarify their meaning and promote consistency with the EIS data system names. We are proposing to revise FIPs code to State and County FIPs Code or Tribal Code. For each of the five existing stack and exit gas data elements, we are proposing to revise their names to add ''Release Point'' in order to be consistent with EIS names. We are also proposing to

explicitly add five Unit of Measure data elements, one for each of the existing numerical stack and exit gas data elements. We believe the only reasonable interpretation of the existing requirements to report these five stack parameter numerical values is to also report the units of measure used for the numerical values. In addition, the use of the term ''Emission Type'' in existing Table 2a is an error; it was intended to read ''Emission Operating Type,'' but that element is now proposed to be moved to Table 2b since it describes the emissions reported, not the facility.

We propose to clarify that the existing requirement for Physical Address is implemented in the EIS data system by the four separate data elements of Location Address, Locality Name, State Code, and Postal Code.

6. Revisions To Simplify Reporting and Reduce Burden

We are proposing revisions to some data elements in the point source facility inventory Table 2a to simplify reporting and reduce burden where we believe it does not impact the usefulness of the data. We are revising the existing requirements for Exit Gas Velocity and Exit Gas Flow Rate to indicate that one or the other of these two is required, but not both. Because the release point stack diameter is also required, it is possible for users to derive the velocity or the flow rate from the other value, and so it is not necessary for states to report both, and it was not the EPA's intent to require both. To reduce burden, we are revising the existing rule terms X Stack Coordinate (longitude) and Y Stack Coordinate (latitude) by requiring these location values only at the facility level, rather than the stack level. It has been EPA's experience that most states do not have accurate location values for each individual stack within a facility; instead they report the same locational values for all stacks within a facility. Furthermore, the vast majority of facilities are geographically small enough that such a simplification does not reduce the usefulness of the data. Although we are proposing to relax the requirement to just facility locational data, the EIS data system does retain the ability to store individual stack locations separately from a single facility center location, and we encourage states to optionally report individual stack locations to add accuracy beyond the single facility center location. The EPA may also add such individual stack locations where the agency believes it has accurate data.

Lastly, to reduce burden, we are proposing to eliminate reporting of several data elements that appear in existing Tables 2a, 2b and 2c in various combinations for the four emissions source types. For all four emission source types, we are proposing to eliminate Inventory Start Date and End Date; Contact Name and Phone Number; and the four seasonal throughput percents. In addition, for the point, nonpoint, and nonroad source types, we are proposing to eliminate the three operating schedule elements: Hours Per Day, Days Per Week, and Weeks Per Year. Also for the point source type we are proposing to eliminate the following elements: Heat Content, Ash Content, Sulfur Content, Method Accuracy Description Codes, and Maximum Generator Nameplate Capacity. The EPA believes that the usefulness of the remaining data would not be significantly impacted by not collecting these data from the states.

Note that three other data elements are proposed to be removed for all four emissions source types for the reasons described above in paragraph D, ''Removal of Requirements to Report Daily and Seasonal Emissions.'' These elements are: Summer Day Emissions, Ozone Season Emissions, and Winter Work Weekday emissions of CO. All of the data elements proposed to be removed from the required reporting lists may still be voluntarily reported to the EIS data system.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations 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

The information collection requirements in this proposed amendment have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection request (ICR) document prepared by EPA has been assigned EPA ICR number 2170.05.

The information collection requirements in the proposed amendments are mandatory for all states and territories (excluding tribal governments). These requirements are authorized by CAA section 110(a). The reported emissions data are used by the EPA to develop and evaluate states, regional, and national control strategies; to assess and analyze trends in criteria pollutant emissions; to identify emission and control technology research priorities; and to assess the impact of new or modified sources within a geographic area. The emission inventory data are also used by states to develop, evaluate, and revise their SIP.

The proposed amendments would reduce the information collection burden for each of the 104 respondents by about 91 labor hours per year from current levels. The annual average reporting burden for this collection (averaged over the first 3 years of this ICR) is estimated to decrease by a total of 9452 labor hours per year with a decrease in costs of $718,368. From the perspectives of the sources reporting to the states, the EPA does not believe that there will be any change in reporting burden resulting from these amendments because the same universe of sources will be required to report to the states. No capital/startup costs or operation and maintenance costs for monitoring equipment are attributable to the proposed amendments. The only costs associated with the proposed amendments are labor hours associated with collection, management, and reporting of the data through existing systems.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 51 are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, the EPA has established a public docket for the proposed rule, which includes this

ICR, under Docket ID number OAR–2004–0489. Submit any comments related to the ICR for these proposed amendments to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 20, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by July 22, 2013. The final amendments will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed action will not impose any new requirements on small entities. This action primarily impacts state and local agencies and does not regulate small entities. The proposed amendments correct and clarify emissions reporting requirements and provide states with additional flexibility in how they collect and report their emissions data. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 1 year. No significant costs are attributable to the proposed amendments; in fact, the proposed amendments are estimated to decrease costs associated with emissions inventory reporting. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed amendments are not subject to section 203 of the UMRA.

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. The proposed amendments correct and clarify emissions reporting requirements and provide states with additional flexibility in how they collect and report their emissions data. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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). This proposed rule imposes no requirements on tribal governments. The proposed amendments correct and clarify emissions reporting requirements and provide states with additional flexibility in how they collect and report their emissions data. Under the Tribal Authority Rule, tribes are not required to report their emissions to us. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, the EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed amendments are not likely to have any adverse energy effects since the proposed amendments correct and clarify emissions reporting requirements and provide states with additional flexibility in how they collect and report their emissions data.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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 proposed 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. This action establishes information reporting procedures for emissions of criteria air pollutants from stationary and mobile source but does not affect the quantities of the pollutants emitted.

List of Subjects in 40 CFR Part 51

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and record keeping requirements, Sulfur dioxide.

Dated: June 6, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 51 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. This authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

§ 51.10 [Removed and reserved]

■ 2. Remove and reserve § 51.10.

■ 3. Amend § 51.15 by:

■ a. Revising paragraphs (a)(2) and (a)(3);

■ b. Removing paragraphs (a)(4) and (a)(5);

■ c. Revising paragraphs (b)(2), (b)(3), and (b)(4);

■ d. Revising the first sentence in paragraphs (c) and (d); and

■ e. Removing paragraph (e).

The revisions read as follows:

§ 51.15 What data does my state need to report to EPA?

(a) * * *

(2) A state may, at its option, choose to report NO_X and VOC summer day emissions as required under the Ozone Implementation Rule or report CO winter work weekday emissions for CO nonattainment areas or CO attainment areas with maintenance plans to the Emission Inventory System (EIS) using the data elements described in this subpart.

(3) A state may, at its option, include estimates of emissions for additional pollutants (such as hazardous air pollutants) in its emission inventory reports.

(b) * * *

(2) Nonpoint. States may choose to meet the requirements for some of their nonpoint sources by accepting the EPA's estimates for the sources for which the EPA makes calculations. In such instances, states are encouraged to review and update the activity values or other calculational inputs used by the EPA for these sources.

(3) Onroad and Nonroad mobile. Emissions for onroad and nonroad mobile sources must be reported as inputs to the latest EPA-required mobile emissions models, such as the Motor Vehicle Emissions Simulator (MOVES) for onroad sources or the National Mobile Inventory Model (NMIM) for nonroad sources. States may report, at their discretion, emissions computed from these models in addition to the model inputs. In lieu of submitting model inputs, California must submit resultant emission values from its EPA-approved models and tribes must submit resultant emissions values from the latest EPA-required mobile emissions models. In lieu of submitting any data, states may accept existing EPA emission estimates.

(4) Emissions for wild and prescribed fires are not required to be reported by states. If states wish to optionally report these sources, they must be reported to the events data category. This data category is a day-specific accounting of these large-scale but usually short duration emissions. Submissions must include both daily emissions estimates as well as daily acres burned values. In lieu of submitting this information, states may accept the EPA estimates or they may submit inputs to EPA's estimation approach.

(c) * * * You must report the data elements in Tables 2a and 2b in Appendix A of this subpart. * * *

(d) * * * We do not consider the data in Tables 2a and 2b in Appendix A of this subpart confidential, but some states limit release of this type of data. * * *

■ 4. Amend § 51.20 by revising paragraphs (b) and (d) to read as follows:

§ 51.20 What are the emission thresholds that separate point and nonpoint sources?

* * * * *

(b) Sources that meet the definition of point source in this subpart must be reported as point sources. All pollutants specified in § 51.15(a) must be reported for point sources, not just the pollutant(s) that qualify the source as a point source.

* * * * *

(d) All stationary source emissions that are not reported as point sources must be reported as nonpoint sources. Episodic wind-generated particulate matter (PM) emissions from sources that are not major sources may be excluded, for example dust lifted by high winds from natural or tilled soil. Emissions of nonpoint sources should be aggregated to the resolution required by the EIS as described in the current National Emission Inventory (NEI) inventory year plan posted at *http://www.epa.gov/ttn/chief/eiinformation.html.* In most cases, this is county level and must be separated and identified by source classification code (SCC). Nonpoint source categories or emission events reasonably estimated by the state to represent a de minimis percentage of total county and state emissions of a given pollutant may be omitted.

(1) The reporting of wild and prescribed fires is encouraged but not required and should be done via only the ''Events'' data category.

(2) Agricultural fires (also referred to as crop residue burning) must be reported to the nonpoint data category.

■ 5. Section 51.30 is revised to read as follows:

§ 51.30 When does my State report which emissions data to EPA?

All states are required to report two basic types of emission inventories to the EPA: an every-year inventory; and a triennial inventory.

(a) *Every-year inventory.* See Tables 2a and 2b of Appendix A of this subpart for the specific data elements to report every year.

(1) All states are required to report every year the annual (12-month) emissions of all pollutants listed in § 51.15(a)(1) from Type A (large) point sources, as defined in Table of Appendix A of this subpart. The first every-year cycle inventory will be for the 2009 inventory year and must be submitted to the EPA within 12 months, *i.e.,* by December 31, 2010.

(2) In inventory years that fall under the triennial inventory requirements,

the reporting required by the triennial inventory satisfies the every-year reporting requirements of paragraph (a) of this section.

(b) *Triennial inventory.* See Tables 2a and 2b to Appendix A of subpart A for the specific data elements that must be reported for the triennial inventories.

(1) All states are required to report for every third inventory year the annual (12-month) emissions of all pollutants listed in § 51.15(a)(1) from all point sources and nonpoint sources, as well as model inputs for onroad mobile sources and nonroad mobile sources. The first triennial inventory will be for the 2011 inventory and must be submitted to the EPA within 12 months, *i.e.,* by December 31, 2012. Subsequent triennial inventories (2011, 2014, etc) will be due 12 months after the end of the inventory year, *i.e.,* by December 31 of the following year.

(2) Any state with an area for which the EPA has made an 8-hour ozone nonattainment designation finding (regardless of whether that finding has reached its effective date) may choose to report summer day emissions of VOC and NO_X from all point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources to the EIS using the data elements described in this subpart.

(3) States with CO nonattainment areas and states with CO attainment areas subject to maintenance plans may choose to report winter work weekday emissions of CO to the EIS using the data elements described in this subpart.

■ 6. Section 51.35 is revised to read as follows:

§ 51.35 How can my state equalize the emission inventory effort from year to year?

(a) Compiling a triennial inventory means more effort every three years. As an option, your state may ease this workload spike by using the following approach:

(1) Each year, collect and report data for all Type A (large) point sources (this is required for all Type A point sources).

(2) Each year, collect data for one-third of your sources that are not Type A point sources. Collect data for a different third of these sources each year so that data has been collected for all of the sources that are not Type A point sources by the end of each three-year cycle. You must save three years of data and then report all emissions from the sources that are not Type A point sources on the triennial inventory due date.

(3) Each year, collect data for one-third of the nonpoint, nonroad mobile, and onroad mobile sources. You must save 3 years of data for each such source and then report all of these data on the triennial inventory due date.

(b) For the sources described in paragraph (a) of this section, your state will have data from 3 successive years at any given time, rather than from the single year in which it is compiled.

(c) If your state chooses the method of inventorying one-third of your sources that are not Type A point sources and triennial inventory nonpoint, nonroad mobile, and onroad mobile sources each year, your state must compile each year of the three-year period identically. For example, if a process has not changed for a source category or individual plant, your state must use the same emission factors to calculate emissions for each year of the three-year period. If your state has revised emission factors during the three years for a process that has not changed, you must compute previous years' data using the revised factor. If your state uses models to estimate emissions, you must make sure that the model is the same for all 3 years.

■ 7. Section 51.40 is revised to read as follows:

§ 51.40 In what form and format should my state report the data to EPA?

You must report your emission inventory data to us in electronic form. We support specific electronic data reporting formats, and you are required to report your data in a format consistent with these. The term format encompasses the definition of one or more specific data fields for each of the data elements listed in Tables 2a and 2b in Appendix A of this subpart; allowed code values for certain data fields; transmittal information; and data table relational structure. Because electronic reporting technology may change, contact the EPA Emission Inventory and Analysis Group (EIAG) for the latest specific formats. You can find information on the current formats at the following Internet address: *http://www.epa.gov/ttn/chief/eis/2011nei/xml_data_eis.pdf.* You may also call the air emissions contact in your EPA Regional Office or our Info CHIEF help desk at (919) 541–1000 or send email to *info.chief@epa.gov.*

■ 8. Section 51.50 is revised to read as follows:

§ 51.50 What definitions apply to this subpart?

Aircraft engine type means a code defining a unique combination of aircraft and engine used as an input parameter for calculating emissions from aircraft.

Annual emissions means actual emissions for a plant, point, or process that are measured or calculated to represent a calendar year.

Control measure means a unique code for the type of control device or operational measure (e.g., wet scrubber, flaring, process change, ban) used to reduce emissions.

Emission calculation method means the code describing how the emissions for a pollutant were calculated, e.g., by stack test, continuous emissions monitor, EPA emission factor, etc.

Emission factor means the ratio relating emissions of a specific pollutant to an activity throughput level.

Emission process identifier means a unique code for the process generating the emissions.

Emission operating type means the operational status of an emissions unit for the time period for which emissions are being reported, i.e., Routine, Startup, Shutdown, or Upset.

Emission type means the type of emissions produced for onroad and nonroad sources or the mode of operation for marine vessels.

Emissions year means the calendar year for which the emissions estimates are reported.

Facility site name means the name of the facility.

Facility site identifier means the unique code for a plant or facility treated as a point source, containing one or more pollutant-emitting units. The EPA's reporting format allows for state submittals to use either the state's data system identifiers or the EPA's Emission Inventory System identifiers.

Lead (Pb) means lead as defined in 40 CFR 50.12. Emissions of lead which occur either as elemental lead or as a chemical compound containing lead should be reported as the mass of the lead atoms only.

Mobile source means a motor vehicle, nonroad engine or nonroad vehicle, where:

(1) A *motor vehicle* is any self-propelled vehicle used to carry people or property on a street or highway;

(2) A *nonroad engine* is an internal combustion engine (including fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not affected by sections 111 or 202 of the CAA; and

(3) A *nonroad vehicle* is a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

NAICS means North American Industry Classification System code. The NAICS codes are U.S. Department of Commerce's codes for categorizing businesses by products or services and have replaced Standard Industrial Classification codes.

Nitrogen oxides (NO_X) means nitrogen oxides (NO_X) as defined in 40 CFR 60.2 as all oxides of nitrogen except N_2O. Nitrogen oxides should be reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Nonpoint sources collectively represent individual sources that have not been inventoried as specific point or mobile sources. These individual sources treated collectively as nonpoint sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Particulate matter (PM) is a criteria air pollutant. For the purpose of this subpart, the following definitions apply:

(1) *Filterable $PM_{2.5}$ or Filterable PM_{10}:* Particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train. Filterable $PM_{2.5}$ is particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers. Filterable PM_{10} is particulate matter with an aerodynamic diameter equal to or less than 10 micrometers.

(2) *Condensable PM:* Material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack. Note that all condensable PM, if present from a source, is typically in the $PM_{2.5}$ size fraction and, therefore, all of it is a component of both primary $PM_{2.5}$ and primary PM_{10}.

(3) *Primary $PM_{2.5}$:* The sum of filterable $PM_{2.5}$ and condensable PM.

(4) *Primary PM_{10}:* The sum of filterable PM_{10} and condensable PM.

(5) *Secondary PM:* Particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM is usually formed at some distance downwind from the source. Secondary PM should not be reported in the emission inventory and is not covered by this subpart.

Percent control approach capture efficiency means the percentage of an exhaust gas stream actually collected for routing to a set of control devices.

Percent control approach effectiveness means the percentage of time or activity throughput that a control approach is operating as designed, including the capture and reduction devices. This percentage accounts for the fact that controls typically are not 100 percent effective because of equipment downtime, upsets and decreases in control efficiencies.

Percent control approach penetration means the percentage of a nonpoint source category activity that is covered by the reported control measures.

Percent control measures reduction efficiency means the net emission reduction efficiency across all emissions control devices. It does not account for capture device efficiencies.

Physical address means the location address (street address or other physical location description), locality name, state, and postal zip code of a facility. This is the physical location where the emissions occur; not the corporate headquarters or a mailing address.

Point source means large, stationary (non mobile), identifiable sources of emissions that release pollutants into the atmosphere. A point source is a facility that is a major source under 40 CFR part 70 for one or more of the pollutants for which reporting is required by § 51.15(a)(1). This does not include the emissions of hazardous air pollutants, which are not considered in determining whether a source is a point source under this subpart. The minimum point source reporting thresholds are shown in Table 1 of Appendix A.

Pollutant code means a unique code for each reported pollutant assigned by the reporting format specified by the EPA for each inventory year.

Release point apportionment percent means the average percentage(s) of an emissions exhaust stream directed to a given release point.

Release point exit gas flow rate means the numeric value of the flow rate of a stack gas.

Release point exit gas temperature means the numeric value of the temperature of an exit gas stream in degrees Fahrenheit.

Release point exit gas velocity means the numeric value of the velocity of an exit gas stream.

Release point identifier means a unique code for the point where emissions from one or more processes release into the atmosphere.

Release point stack diameter means the inner physical diameter of a stack.

Release point stack height means physical height of a stack above the surrounding terrain.

Release point type code means the code for physical configuration of the release point.

Reporting period type means the code describing the time period covered by the emissions reported, *i.e.,* Annual, 5-month ozone season, summer day, or winter.

State and county FIPS code means the system of unique identifiers in the Federal Information Placement System (FIPS) used to identify states, counties and parishes for the entire United States, Puerto Rico, and Guam.

Source classification code (SCC) means a process-level code that describes the equipment and/or operation which is emitting pollutants.

Throughput means a measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source during the period for which emissions are reported. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, or number of units. Activity throughput is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Type A source means large point sources with a potential to emit greater than or equal to any of the thresholds listed in Table 1 of Appendix A of this subpart. If a source is a Type A source for any pollutant listed in Table 1, then the emissions for all pollutants required by § 51.15 must be reported for that source.

Unit design capacity means a measure of the size of a point source, based on the reported maximum continuous throughput or output capacity of the unit.

Unit identifier means a unique code for the unit that generates emissions, typically a physical piece of equipment or a closely related set of equipment.

VOC means volatile organic compounds. The EPA's regulatory definition of VOC is in 40 CFR 51.100.

■ 9. Revise Table 1 to Appendix A of subpart A to read as follows:

TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS [1] BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30

Pollutant	Every-year (Type A sources) [2]	Triennial	
		Type B sources	NAA sources [3]
(1) SO_2	≥2500	≥100	≥100
(2) VOC	≥250	≥100	O_3 (moderate) ≥100 O_3 (serious) ≥ 50 O_3 (severe) ≥ 25 O3 (extreme) ≥10
(3) NO_X	≥2500	≥100	≥100
(4) CO	≥2500	≥1000	O_3 (all areas) ≥100 CO (all areas) ≥100
(5) Lead		≥0.5	≥0.5
(6) Primary PM_{10}	≥250	≥100	PM_{10} (moderate) ≥100 PM_{10} (serious) ≥70
(7) Primary $PM_{2.5}$	≥250	≥100	≥100
(8) NH_3 [4]	≥250	≥100	≥100

[1] Thresholds for point source determination shown in tons per year of potential to emit as defined in 40 CFR part 70. Reported emissions should be in actual tons emitted for the required time period.
[2] Type A sources are a subset of the Type B sources and are the larger emitting sources by pollutant.
[3] NAA = Nonattainment Area. The point source reporting thresholds vary by attainment status for VOC, CO, and PM_{10}.
[4] NH_3 threshold applies only in areas where ammonia emissions are a factor in determining whether a source is a major source, i.e., where ammonia is considered a significant precursor of $PM_{2.5}$.

■ 10. Revise Table 2a to Appendix A of Subpart A to read as follows:

TABLE 2A TO APPENDIX A OF SUBPART A—FACILITY INVENTORY [1] DATA ELEMENTS FOR REPORTING EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.30

Data Elements
(1) Emissions Year.
(2) State and County FIPS Code or Tribal Code.
(3) Facility Site Identifier.
(4) Unit Identifier.
(5) Emission Process Identifier.
(6) Release Point Identifier.
(7) Facility Site Name.
(8) Physical Address (Location Address, Locality Name, State and Postal Code).
(9) Latitude and Longitude at facility level.
(10) Source Classification Code.

TABLE 2A TO APPENDIX A OF SUBPART A—FACILITY INVENTORY [1] DATA ELEMENTS FOR REPORTING EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.30—Continued

(11) Aircraft Engine Type (where applicable).
(12) Facility Site Status and Year.
(13) Release Point Stack Height and Unit of Measure.
(14) Release Point Stack Diameter and Unit of Measure.
(15) Release Point Exit Gas Temperature and Unit of Measure.
(16) Release Point Exit Gas Velocity or Release Point Exit Gas Flow Rate and Unit of Measure.
(17) Release Point Status and Year.
(18) NAICS at facility level.
(19) Unit Design Capacity and Unit of Measure (for some unit types).
(20) Unit Type.
(21) Unit Status and Year.
(22) Release Point Apportionment Percent.

TABLE 2A TO APPENDIX A OF SUBPART A—FACILITY INVENTORY [1] DATA ELEMENTS FOR REPORTING EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.30—Continued

(23) Release Point Type.
(24) Control Measure and Control Pollutant (where applicable).
(25) Percent Control Approach Capture Efficiency (where applicable).
(26) Percent Control Measures Reduction Efficiency (where applicable).
(27) Percent Control Approach Effectiveness (where applicable).

[1] Facility Inventory data elements need only be reported once to the EIS and then revised if needed. They do not need to be reported for each triennial or every-year emissions inventory.

■ 11. Table 2b to Appendix A of Subpart A is revised to read as follows:

TABLE 2B TO APPENDIX A OF SUBPART A—DATA ELEMENTS FOR REPORTING EMISSIONS FROM POINT, NONPOINT, ONROAD MOBILE AND NONROAD MOBILE SOURCES, WHERE REQUIRED BY 40 CFR 51.30

Data elements	Point	Nonpoint	Onroad	Nonroad
(1) Emissions Year	Y	Y	Y	Y
(2) FIPS code	Y	Y	Y	Y
(3) Shape Identifiers (where applicable)		Y		
(4) Source Classification Code		Y	Y	Y
(5) Emission Type (where applicable)		Y	Y	Y
(8) Emission Factor	Y	Y		
(9) Throughput (Value, Material, Unit of Measure, and Type)	Y	Y	Y	
(10) Pollutant Code	Y	Y	Y	Y
(11) Annual Emissions and Unit of Measure	Y	Y	Y	Y
(12) Reporting Period Type (Annual)	Y	Y	Y	Y
(13) Emission Operating Type (Routine)	Y			
(14) Emission Calculation Method	Y	Y		
(15) Control Measure and Control Pollutant (where applicable)		Y		
(16) Percent Control Measures Reduction Efficiency (where applicable)		Y		
(17) Percent Control Approach Effectiveness (where applicable)		Y		

TABLE 2B TO APPENDIX A OF SUBPART A—DATA ELEMENTS FOR REPORTING EMISSIONS FROM POINT, NONPOINT, ONROAD MOBILE AND NONROAD MOBILE SOURCES, WHERE REQUIRED BY 40 CFR 51.30—Continued

Data elements	Point	Nonpoint	Onroad	Nonroad
(18) Percent Control Approach Penetration (where applicable)		Y		

■ 12. Amend § 51.122 by:
■ a. Revising paragraph (c);
■ b. Removing and reserving paragraph (d); and
■ c. Revising paragraph (f).

The revisions read as follows:

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_X emissions.

* * * * *

(c) Each revision must provide for periodic reporting by the state of NO_X emissions data to demonstrate whether the state's emissions are consistent with the projections contained in its approved SIP submission. The data availability requirements in § 51.116 must be followed for all data submitted to meet the requirements of paragraph (c) of this section.

* * * * *

(f) Reporting schedules. Data collection is to begin during the ozone season 1 year prior to the state's NO_X SIP Call compliance date.

[FR Doc. 2013–14628 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0362; FRL–9815–4]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the San Diego Air Pollution Control District (SDAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from architectural coatings. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 22, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0362, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: San Diego APCD Rule 67.0 Architectural Coatings. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 6, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–14514 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2012–0110; FRL–9819–1]

RIN 2025–AA34

Addition of Nonylphenol Category; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add a nonylphenol category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. EPA is proposing to add this chemical category to the EPCRA section 313 list pursuant to its authority to add chemicals and chemical categories because EPA believes this category meets the EPCRA section 313(d)(2)(C)

toxicity criterion. Based on a review of the available production and use information, the members of the nonylphenol category are expected to be manufactured, processed, or otherwise used in quantities that would exceed the EPCRA section 313 reporting thresholds.

DATES: Comments must be received on or before August 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2012–0110, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460
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FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0677; email: *bushman.daniel@epa.gov*, for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 (select menu option 3) or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/superfund/contacts/infocenter/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use nonylphenol. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How should I submit CBI to the Agency?

Do not submit CBI information to EPA through www.regulations.gov or email. Clearly mark the part or all of the

information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Introduction

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans:

(i) Cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of:

(i) Its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Background Information

A. What is nonylphenol?

Nonylphenol is an organic chemical whose main use is in the manufacture of nonylphenol ethoxylates, which are nonionic surfactants used in a wide variety of industrial applications and consumer products (Reference (Ref.) 1). Nonylphenol is persistent in the aquatic environment, moderately bioaccumulative, and extremely toxic to aquatic organisms (Ref. 1). Nonylphenol has also been detected in human breast milk, blood, and urine (Ref. 1).

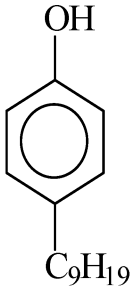
B. What is the chemical structure and identification of nonylphenol?

The chemical structure of nonylphenol consists of a phenol ring (benzene with a hydroxyl (OH) group) with a nonyl group (a nine carbon alkyl chain) attached to the phenol ring. The nonyl group can either be a branched or linear chain located at various positions on the phenol ring (primarily the ortho (2) and para (4) positions). Nonylphenol is not a single chemical structure. Rather it is a complex mixture of highly branched nonylphenols, mostly mono-substituted in the para position (i.e., the 4 position), with small amounts of ortho- and di-substituted nonylphenols. In addition, nonylphenol can include small amounts of branched 8 carbon and 10 carbon alkyl groups (Ref. 2).

As noted in EPA's Action Plan for nonylphenol (Ref. 1), Chemical Abstract Service Registry Numbers (CASRNs) that are routinely used for nonylphenols may not accurately reflect the identity of those substances. Manufacturers may incorrectly use a linear identity when actually referring to branched nonylphenol. CASRN 84852–15–3 corresponds to the most widely produced nonylphenol, branched 4-nonylphenol. Much of the literature refers to the linear (or normal) nonylphenol (CASRN 25154–52–3) and there are also references to a specific linear para isomer 4-n-nonylphenol (CASRN 104–40–5), which is covered within the broader CASRN 25154–52–3. Many, but not all, references may be inaccurate about the identity of the substances listed as nonylphenol due to inaccurate identities in the source material. A supplier of nonylphenol may use CASRN 104–40–5, signifying the linear 4-n-nonylphenol, while actually supplying branched 4-nonylphenol (CASRN 84852–15–3). The name 4-nonylphenol is listed as a synonym under CASRN 104–40–5, which may lead to such confusion.

C. How is EPA proposing to list nonylphenol on the TRI?

Because there is no one CASRN that adequately captures what is referred to as nonylphenol and because of the apparent confusion that has resulted from the use of multiple CASRNs, EPA is proposing to add nonylphenol as a category defined by a structure. EPA is proposing to define the nonylphenol category using the structure and text presented below.



Where C_9H_{19} = Branched or straight alkyl chain

This category definition covers the chemicals that are included in CASRNs 84852–15–3 as well as those 4 position isomers covered by CASRN 25154–52–3. Any nonylphenol that meets the above category definition would be reportable regardless of its assigned CASRN.

IV. What Is EPA's evaluation of the environmental toxicity of nonylphenol?

Nonylphenol is toxic to aquatic organisms and has been found in ambient waters. Because of nonylphenol's toxicity, chemical properties, and widespread use as a chemical intermediate, concerns have been raised over the potential risks to aquatic organisms from exposure to nonylphenol. All of the hazard information presented here has been adapted from EPA's 2005 Water Quality Criteria document for nonylphenol, which was previously peer reviewed (Ref. 3).

A. Acute Toxicity to Aquatic Animals

1. *Freshwater Species.* The acute toxicity values of nonylphenol to freshwater organisms are shown in Table 1. Acute toxicities have been determined for more than 18 species representing over 15 genera. Toxicity values ranged from 21 micrograms per liter (μg/L) for a detritivorous amphipod (*Hyalella aztecta*) to 774 μg/L for an algal grazing snail (*Physella virgata*) (Ref. 4). No relationships were found between nonylphenol toxicity and water hardness or pH.

An amphipod (*Hyalella azteca*) was the most sensitive species tested with LC_{50} values (i.e., the concentration that is lethal to 50% of test organisms) ranging from 21 to 150 μg/L (Refs. 4 and 5). Reported EC_{50} values (i.e., the concentration that is effective in producing a sublethal response in 50% of test organisms) for the water flea (*Daphnia magna*) ranged from 104 to 190 μg/L in renewal and static tests respectively (Refs. 4 and 6). The overall mean acute value for *Daphnia magna* was 141 μg/L.

Species least sensitive to nonylphenol were also invertebrates. An annelid worm (*Lumbriculus variegatus*) had an LC_{50} of 342 μg/L, while the acute endpoint for a dragonfly nymph (*Ophiogomphus* sp.) was an LC_{50} of 596 μg/L (Ref. 4). The least sensitive species tested was a snail (*Physella virgata*) with an LC_{50} of 774 μg/L. Eleven species of fish were tested and found to be in the mid-range of sensitivity to nonylphenol with acute values ranging from 110 to 360 μg/L.

TABLE 1—ACUTE TOXICITY OF NONYLPHENOL TO FRESHWATER ORGANISMS

Species	Common name	Method [a]	pH	LC_{50} or EC_{50} (μg/L)	Reference
Hyalella azteca (juvenile, 2 mm total length)	Amphipod	F, M	7.80	21	Ref. 4.
Daphnia magna (< 24 hr old)	Water Flea	R, M	7.87	104	Ref. 4.
Etheostoma rubrum (0.062g, 20.2 mm)	Fountain Darter	S, U	8.0–8.1	110	Ref. 7.
Bufo boreas (0.012g, 9.6 mm)	Boreal Toad	S, U	7.9–8.0	120	Ref. 7.
Pimephales promelas (25–35 days old)	Fathead Minnow	F, M	7.23	128	Ref. 8.
Oncorhynchus mykiss (0.27 ± 0.07g)	Rainbow Trout	S, U	7.9	140	Ref. 9.
Oncorhynchus clarki henshawi (0.34 ± 0.08g)	Lahontan Cutthroat Trout	S, U	7.9	140	Ref. 9.
Pimephales promelas (32 days old)	Fathead Minnow	F, M	7.29	140	Refs. 10 and 11.
Hyalella azteca (juvenile, 2–3mm total length)	Amphipod	F, M	7.9–8.7	150	Ref. 5.
Oncorhynchus clarki stomais (0.31 ± 0.17g)	Greenback Cutthroat Trout	S, U	7.5–7.6	150	Ref. 9.
Chironomus tentans (2nd instar)	Midge	F, M	8.0–8.4	160	Ref. 12.
Oncorhynchus mykiss (0.48 ± 0.08g)	Rainbow Trout	S, U	7.5–7.9	160	Ref. 9.
Oncorhynchus apache (0.38 ± 0.18g)	Apache Trout	S, U	7.3–7.7	160	Ref. 9.
Xyrauchen texanus (0.31 ± 0.04g)	Razorback Sucker	S, U	7.8–8.1	160	Ref. 9.
Pimephales promelas (0.34 ± 0.24g)	Fathead Minnow	S, U	7.5–7.6	170	Ref. 9.
Oncorhynchus mykiss (0.50 ± 0.21g)	Rainbow Trout	S, U	6.5–7.9	180	Ref. 9.
Oncorhynchus apache (0.85 ± 0.49g)	Apache Trout	S, U	7.8–7.9	180	Ref. 9.
Daphnia magna (< 24 hr old)	Water Flea	S, M	8.25	190	Ref. 6.
Oncorhynchus mykiss (0.67 ± 0.35g)	Rainbow Trout	S, U	7.8–7.9	190	Ref. 9.
Xyrauchen texanus (0.32 ± 0.07g)	Razorback Sucker	S, U	7.9–8.0	190	Ref. 9.
Etheostoma lepidum (0.133g, 22.6 mm)	Greenthroat Darter	S, U	8.0–8.2	190	Ref. 7.
Lepomis macrochirus (juvenile)	Bluegill	F, M	7.61	209	Ref. 4.
Pimephales promelas (0.32 ± 0.16g)	Fathead Minnow	S, U	7.7–8.1	210	Ref. 9.
Oncorhynchus clarki henshawi (0.57 ± 0.23g)	Lahontan Cutthroat Trout	S, U	7.6–7.7	220	Ref. 9.
Oncorhynchus mykiss (45 days old)	Rainbow Trout	F, M	6.72	221	Ref. 4.
Poeciliopsis occidentalis (0.22g, 27.2 mm)	Gila Topminnow	S, U	8.0	230	Ref. 7.
Ptychocheilus lucius (0.32 ± 0.05g)	Colorado Squawfish	S, U	8.1–8.2	240	Ref. 9.
Oncorhynchus mykiss (1.25 ± 0.57g)	Rainbow Trout	S, U	7.5–7.7	260	Ref. 9.

TABLE 1—ACUTE TOXICITY OF NONYLPHENOL TO FRESHWATER ORGANISMS—Continued

Species	Common name	Method [a]	pH	LC_{50} or EC_{50} (µg/L)	Reference
Oncorhynchus mykiss (1.09 ± 0.38g)	Rainbow Trout	S, U	7.7–7.9	270	Ref. 9.
Gila elegans (0.29 ± 0.08g)	Bonytail Chub	S, U	7.7–7.9	270	Ref. 9.
Ptychocheilus lucius (0.34 ± 0.05g)	Colorado Squawfish	S, U	7.8–8.0	270	Ref. 9.
Pimephales promelas (0.39 ± 0.14g)	Fathead Minnow	S, U	7.8–8.2	290	Ref. 9.
Pimephales promelas (0.45 ± 0.35g)	Fathead Minnow	S, U	7.6–7.8	310	Ref. 9.
Gila elegans (0.52 ± 0.09g)	Bonytail Chub	S, U	7.4–7.6	310	Ref. 9.
Pimephales promelas (0.40 ± 0.21g)	Fathead Minnow	S, U	7.5–7.9	330	Ref. 9.
Lumbriculus variegatus (adult)	Annelid	F, M	6.75	342	Ref. 4.
Pimephales promelas (0.56 ± 0.19g)	Fathead Minnow	S, U	7.8–8.1	360	Ref. 9.
Ophiogomphus sp. (nymph)	Dragonfly	F, M	8.06	596	Ref. 4.
Physella virgata (adult)	Snail	F, M	7.89	774	Ref. 4.

[a] S = Static; R = Renewal; F = Flow-through; M = Measured; U = Unmeasured.

2. *Saltwater Species.* The acute toxicity values of nonylphenol to saltwater organisms are shown in Table 2. Acute toxicities have been determined for 11 species within 11 genera. Acute toxicity values ranged from 17 µg/L for the winter flounder (*Pleuronectes americanus*) (Ref. 13), to 310 µg/L for the sheepshead minnow (*Cyprinodon variegatus*) (Ref. 14).

A number of benthic invertebrates have been investigated including a deposit-feeding clam (*Mulinia lateralis*) with an LC_{50} of 38 µg/L (Ref. 13), a copepod (*Acartia tonsa*) with an LC_{50} of 190 µg/L (Ref. 15), the American lobster (*Homarus americanus*) with an LC_{50} of 71 µg/L (Ref. 13), the mud crab (*Dyspanopeus sayii*) with an LC_{50} greater than 195 µg/L (Ref. 13), and two amphipods (*Leptocheirus plumulosus*) with an LC_{50} of 62 µg/L (Ref. 13) and (*Eohaustorius estuarius*) with an LC_{50} of 138 µg/L (Ref. 16).

TABLE 2—ACUTE TOXICITY OF NONYLPHENOL TO SALTWATER AQUATIC ORGANISMS

Species	Common name	Method [a]	pH	LC_{50} or EC_{50} (µg/L)	Reference
Pleuronectes americanus (48 hrs old)	Winter Flounder	S, M	7.8–8.2	17	Ref. 13.
Mulinia lateralis (embryo/larvae)	Coot Clam	S, U	7.8–8.2	38	Ref. 13.
Mysidopsis bahia [b] (< 24 hrs old)	Mysid Shrimp	F, M	7.3–8.2	43	Ref. 17.
Palaemonetes vulgaris (48 hrs old)	Grass shrimp	F, M	7.8–8.2	59	Ref. 13.
Americamysis bahia (< 24 hrs old)	Mysid Shrimp	F, M	7.8–8.2	61	Ref. 13.
Leptocheirus plumosus (adult)	Amphipod	F, M	7.8–8.2	62	Ref. 13.
Menidia beryllina (juvenile)	Inland Silversides	F, M	7.8–8.2	70	Ref. 13.
Homarus americanus (1st stage larvae)	American Lobster	R, U	7.8–8.2	71	Ref. 13.
Eohaustorius estuarius (adult)	Amphipod	S, U	missing	138	Ref. 16.
Cyprinodon variegatus (juvenile)	Sheepshead Minnow	F, M	7.8–8.2	142	Ref. 13.
Acartia tonsa (10–12 days old)	Copepod	S, U	missing	190	Ref. 15.
Dyspanopeus sayii (4th and 5th stage larvae)	Mud Crab	F, M	7.8–8.2	> 195	Ref. 13.
Cyprinodon variegatus (juvenile)	Sheepshead Minnow	F, M	7.4–8.1	310	Ref. 14.

[a] S = Static; R = Renewal; F = Flow-through; M = Measured; U = Unmeasured.
[b] Note that there has been a taxonomic name change, *Mysidopsis bahia* is now *Americamysis bahia,* the original names from the studies are used in this document to avoid any confusion.

B. Chronic Toxicity to Aquatic Animals

1. Freshwater Species. The chronic toxicity of nonylphenol to freshwater animals has been studied in two fish and three invertebrate species (Table 3). Of the invertebrates, a number of species of the cladoceran (water fleas) genus *Daphnia* have been extensively tested for chronic effects. Water flea (*Ceriodaphnia dubia*) neonates exhibited reproductive impairment when exposed to nonylphenol for 7 days at 202 µg/L and survival was impaired at concentrations of 377 µg/L (Ref. 18). Four to 24-hour old water fleas (*Daphnia magna*) showed a reduction in the number of young per brood over 9 days of exposure to concentrations as low as 48 µg/L. Based on this study, a chronic Lowest-Observed-Effect-Concentration (LOEC) was calculated to be 23 µg/L for effects on brood production (Ref. 19). Water fleas (*Daphnia magna*) exposed to 71 and 130 µg/L nonylphenol for 21 days exhibited declines in both growth and adult survival rates (Ref. 6). In a separate 21-day life cycle study of water fleas (*Daphnia magna*); growth, reproduction, and survival were all reduced at concentrations of 158 µg/L and above (Ref. 4).

Less than 24-hour-old midge (*Chironomus tentans*) larvae exposed to concentrations of nonylphenol from 12 to 200 µg/L and showed significant declines in larval survival over the first 20 days of exposure. The chronic toxicity value for survival was calculated as 62 µg/L (Ref. 20).

A 91-day life stage test was conducted with the embryos and fry of rainbow trout (*Oncorhynchus mykiss*) at concentrations from 6 to 114 µg/L. Nearly all larvae were abnormal at the two highest exposure concentrations (≥ 53 µg/L) (Ref. 4). Survival was reduced at ≥ 23 µg/L and growth measured as both change in weight and length was even more sensitive with measured decreases at concentrations as low as 10 µg/L. The chronic toxicity effect value for growth (both weight and length) was calculated as 8 µg/L (Ref. 4).

Embryos and larvae of the fathead minnow (*Pimephales promelas*) were

exposed in a 33-day early-life-stage test at nonylphenol concentrations ranging from 3 to 23 µg/L (Ref. 21). Hatching was delayed at the two highest concentrations (14 and 23 µg/L). Fathead minnow survival was reduced at concentrations of 14 µg/L and greater. The survival chronic toxicity effect value for fathead minnows was calculated to be 14 µg/L (Ref. 21).

2. *Saltwater Species.* Two chronic toxicity tests have been conducted with mysid shrimp (*Mysidopsis bahia*) (Ref. 22). The first experiment was a 28-day exposure measuring survival, growth, and reproduction. Shrimp survival was reduced by 18% on exposure to 9 µg/L. Growth in length was the most sensitive endpoint with a 7% reduction in length for animals exposed to 7 µg/L and No-Observed-Effect-Concentration (NOEC) and LOEC for growth responses of 4 and 7 µg/L (Table 3).

The second experiment, a 28-day life-cycle test, examined the effect of nonylphenol on brood release and growth (Ref. 23). Growth of female mysids (*Americamysis bahia*) was reduced at concentrations at and above 28 µg/L. Brood production was the most sensitive endpoint in this study. The average number of young per female-reproductive day was reduced at concentrations ≥ 15 µg/L. The NOECs and LOECs for reproductive responses were 9 and 15 µg/L.

TABLE 3—CHRONIC TOXICITY OF NONYLPHENOL TO AQUATIC ORGANISMS

[Freshwater and Saltwater]

Species	Common name	Method [a] [b]	pH	Chronic value range (µg/L)	Endpoint	Reference
Mysidopsis bahia [c]	Mysid Shrimp	LC, SW	7.4–8.3	5	(NOEC x LOEC)$^{1/2}$ Growth.	Ref. 22.
Oncorhynchus mykiss	Rainbow Trout	ESL, FW	6.97	8	(NOEC x LOEC)$^{1/2}$ Growth.	Ref. 4.
Mysidopsis bahia [c]	Mysid Shrimp	LC, SW	7.4–8.3	9	Survival	Ref. 22.
Mysidopsis bahia [c]	Mysid Shrimp	LC, SW	7.4–8.3	9	Reproduction	Ref. 22.
Americamysis bahia	Mysid Shrimp	LC, SW	Missing	12	(NOEC x LOEC)$^{1/2}$ Total Number of Young.	Ref. 23.
Pimephales promelas	Fathead Minnow	ELS, FW	7.1–8.2	14	Delayed Hatching; Survival.	Ref. 21.
Oncorhynchus mykiss	Rainbow Trout	ESL, FW	6.97	23	Survival	Ref. 4.
Daphnia magna	Water Flea	LC, FW	8.04	23	(NOEC x LOEC)$^{1/2}$ Total Number of Young.	Ref. 19.
Americamysis bahia	Mysid Shrimp	LC, SW	Missing	28	Growth	Ref. 23.
Daphnia magna	Water Flea	LC, FW	8.25	39	Number of Live Young	Ref. 6.
Oncorhynchus mykiss	Rainbow Trout	ESL, FW	6.97	53	Abnormal Development	Ref. 4.
Chironomus tentans	Midge	LC, FW	7.73	62	(NOEC x LOEC)$^{1/2}$ 20 d Survival.	Ref. 20.
Daphnia magna	Water Flea	LC, FW	8.25	71	Growth	Ref. 6.
Daphnia magna	Water Flea	LC, FW	8.25	130	Adult Survival	Ref. 6.
Daphnia magna	Water Flea	LC, FW	8.46	158	(NOEC x LOEC)$^{1/2}$ Growth and Reproduction; Survival.	Ref. 4.
Ceriodaphnia dubia	Water Flea	LC, FW	8.3–8.6	202	Reproductive Impairment	Ref. 18.
Ceriodaphnia dubia	Water Flea	LC, FW	8.3–8.6	377	Survival	Ref. 18.

[a] LC = life-cycle or partial life-cycle; ELS = early life-stage.
[b] FW = Freshwater, SW = Saltwater.
[c] Note that there has been a taxonomic name change, *Mysidopsis bahia* is now *Americamysis bahia,* the original names from the studies are used in this document to avoid any confusion.

C. Toxicity to Aquatic Plants

1. Freshwater. Ecological toxicity data for freshwater plants was available only for single-celled planktonic green alga (*Selenastrum capricornutum*) (Ref. 24). Algae exposed to nonylphenol for 4 days had an EC_{50} for effect on population growth rate of 410 µg/L. The effect did not persist when the algae were transferred to fresh, uncontaminated, growth medium.

2. Saltwater. Ecological toxicity data for saltwater plants are available only for a single species of marine planktonic algae, a diatom (*Skeletonema costatum*) (Ref. 25). The EC_{50} for nonylphenol effect on vegetative growth was 27 µg/L.

D. Bioaccumulation

1. Freshwater Species. Data on bioaccumulation of nonylphenol in freshwater organisms was limited to two species of fish, fathead minnow (*Pimephales promelas*) and bluegill (*Lepomis macrochirus*). Juvenile fathead minnows exposed to 5 and 23 µg/L nonylphenol for 27 days showed non-lipid-normalized bioconcentration factors (BCF) of 271 and 344 respectively (Ref. 26). Values which had been normalized to organism lipid content were approximately five times lower. A short-term (4-day) bioassay indicated that tissue concentrations reached steady-state within two days in both the fathead minnow and bluegill (Ref. 27). Overall, lipid-normalized BCF's for fathead minnows in 4- and 27-day tests ranged from 128 to 209 and for bluegills from 39 to 57 (Ref. 8). A 42-day exposure experiment using fathead minnows and exposure concentrations of 0.4 to 3.4 µg/L resulted in BCFs ranging from 203 to 268 (Ref. 28).

2. Saltwater Species. Bioconcentration factors are available for three species of marine animals; the blue mussel (*Mytilus edulis*), the three-spined stickleback fish (*Gasterosteus aculeatus*), and a benthic shrimp (*Crangon crangon*) (Ref. 29). Individuals of all three species were exposed to carbon-14 (^{14}C)-labeled nonylphenol for 16 days and followed over a subsequent elimination period of 32 days. BCFs

ranged from a measured value in benthic shrimp of 79 to an estimated value of 2,168 for the blue mussel.

E. Reproductive, Developmental, and Estrogenic Effects

Numerous investigations have demonstrated the estrogenic activity of nonylphenol (see Refs. 30, 31, and 32 for reviews). The majority of studies have been conducted with aquatic species and effects have been demonstrated both *in vitro* and *in vivo.* While most of these studies have been conducted on fish, a number of species of invertebrates have also been examined.

1. Aquatic Invertebrates. Among invertebrates, estrogenic effects have been demonstrated in a marine amphipod (*Corophium volutator*) at 10 µg/L (Ref. 33) and larvae of a freshwater insect (*Chironomus riparis*) at 2,000 µg/L (Ref. 34). However, no estrogenic effects were found in a marine copepod (*Tisbe battagliai*) at exposure concentrations up to 55 µg/L (Ref. 35).

2. In Vivo Responses in Fish. The protein vitellogenin, which is produced in the liver, is a primary constituent in the yolk of the ova of oviparous vertebrate species (i.e., species producing eggs which hatch outside the body). Very little vitellogenin is produced in males and increased vitellogenin production in males is an indication of estrogenic effects. While nonylphenol has been shown to produce estrogenic effects, estimates from studies on male rainbow trout (*Oncorhynchus mykiss*) suggest that it is 2,000 to 3,000 times less potent than natural estrogen (17 *beta*-estradiol) (Ref. 36).

Exposure to nonylphenol has been shown to increase vitellogenin production in male rainbow trout (*Oncorhynchus mykiss*) at concentrations from 10 to 100 µg/L over periods of 4 hours to 3 days (Refs. 37, 38 and 39). Jobling and colleagues (Ref. 40) also found increased vitellogenin production in male rainbow trout after 21 days of exposure to nonylphenol concentrations of 20 and 54 µg/L. Similarly, Tremblay and van der Kraak (Ref. 41) found increased plasma vitellogenin after 3 weeks of exposure to 50 µg/L nonylphenol in rainbow trout. Female rainbow trout are similarly sensitive with vitellogenin induction occurring with exposures ranging from 8 to 86 µg/L (Ref. 42). The study on female rainbow trout also noted that nonylphenol exposure caused changes in several pituitary and hormone plasma levels. Exposure to nonylphenol concentrations as low as 4 µg/L led to vitellogenin induction in male green swordfish (*Xiphophorous helleri*). In contrast, additional studies did not show vitellogenin induction in rainbow trout exposed for 9 days at 109 µg/L (Ref. 43) or the Atlantic salmon (*Salmo trutta*) exposed for 30 days to 20 µg/L (Ref. 44).

Vitellogenin messenger ribonucleic acid (mRNA) is a direct precursor to protein formation and increased production in rainbow trout at concentrations of 10 to 14 µg/L when exposed for 4 and 72 hours respectively (Ref. 3). Increased levels of plasma vitellogenin and several pituitary and plasma hormone levels were observed in female rainbow trout exposed to 8 and 86 µg/L nonylphenol. The route of exposure influenced vitellogenin induction in the fathead minnow with an order of magnitude greater induction when exposed via water as opposed to diet (Ref. 45).

Fish fecundity (i.e., the rate of production of young) is also affected in various ways by nonylphenol exposure (Ref. 28). Concentrations as low as 0.5 to 3.4 µg/L, although not acutely toxic, decreased the fecundity of fathead minnows at various times over the reproductive season. At concentrations of approximately 0.1 µg/L, fecundity was increased in fathead minnows. These results suggest a possible hormetic response of fish fecundity to nonylphenol.

A number of studies have been performed with the fish Japanese medaka (*Oryzias latipes*). Following hatch, a cohort of Japanese medaka was exposed for 28 days and monitored for the following 55 days for survival, growth, egg viability, egg production, and gonosomatic index (GSI) (Ref. 46). No effects were noted at the lowest exposure concentration of 1.93 µg/L. However, in a 3-month exposure study with the same species, effects were noted at 50 µg/L and included intersex (development of ovo-testis) and the sex ratio shifted in favor of females (Ref. 47). Another study of Japanese medaka found that, in fish exposed from fertilized egg to 60 days post-hatch, the LOEC for vitellogenin induction was found to be 12 µg/L (Ref. 48).

A two-generation (F_0 and F_1) flow-through study exposed Japanese medaka from eggs to 60 days post-hatch of the second (F_1) generation at concentrations ranging from 4 to 183 µg/L (Ref. 49). For the F_0 generation, egg hatchability was reduced by 48% at 187 µg/L. Survival was reduced at 60 days post-hatch for exposures at or above 18 µg/L. However, no differences in growth rates were observed in the F_0 generation at any exposure concentration 60 days post-hatch. Induction of ovo-testis was observed at 18 µg/L with 20% of the fish exhibiting external male characteristics having ovo-testis. At 51 µg/L, all fish exhibited external female characteristics with 40% containing ovo-testis. Spermatogenesis was observed in ovo-testis containing fish exposed to 18 but not 51 µg/L. Fecundity was not affected by nonylphenol exposure. GSI of female fish was increased by exposure to concentrations greater than 8 µg/L.

Effects of exposure on the F_1 generation were also reported with no embryological abnormalities or hatching failures observed at any of the treatment concentrations. Growth was also not affected at 60 days post-hatch in the F_1 generation. However, the sex ratio as determined by secondary sexual characteristics changed in favor of females (1:2) at concentrations greater than 18 µg/L. Induction of ovo-testis occurred at lower concentrations in the F_1 as opposed to the F_0 generation (8 versus 18 µg/L). All fish in the F_1 generation with ovo-testis displayed external male characteristics and the degree of oocyte development was not as complete as with the F_0 18 µg/L treatment. The overall results suggest a NOEC and LOEC of approximately 8 and 18 µg/L respectively.

A multi-generational study has also been conducted for the rainbow trout (*Oncorhynchus mykiss*) (Ref. 50). Exposure to concentrations of 1 and 10 µg/L of adult males and females was intermittent over 4 months. Vitellogenin induction was increased in adult male fish exposed to both 1 and 10 µg/L. Male progeny of fish exposed to 10 µg/L showed elevated plasma estradiol concentrations. Female progeny showed elevated levels of plasma testosterone and vitellogenin concentrations.

V. Rationale for Listing

EPA's technical evaluation of nonylphenol shows that it can reasonably be anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms. Toxicity values for nonylphenol are available for numerous species of aquatic organisms. The observed effects from nonylphenol exposure occur at very low concentrations demonstrating that nonylphenol is highly toxic to aquatic organisms. Data summarized in this document include acute toxicity values for freshwater organisms ranging from 21 µg/L for a detritivorous amphipod to 774 µg/L for an algal grazing snail. Acute toxicity values for freshwater fish ranged from 110 µg/L for the fountain darter to 128 to 360 µg/L for the fathead minnow. Acute toxicity values for saltwater organisms ranged from 17 µg/L for the winter flounder to

310 μg/L for the sheepshead minnow. Chronic toxicity values are also available for several aquatic species ranging from 5 μg/L for growth effects in mysid shrimp to 377 μg/L for survival effects in water fleas. Chronic toxicity values for rainbow trout ranged from 8 μg/L for effects on growth to 53 μg/L for abnormal development. Reproductive, developmental, and estrogenic effects on aquatic organisms have also been reported for nonylphenol with some effects observed at concentrations of 4 μg/L or less. Therefore, EPA believes that the evidence is sufficient for listing the nonylphenol category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data.

EPA does not believe that it is appropriate to consider exposure for chemicals that are highly toxic based on a hazard assessment when determining if a chemical can be added for environmental effects pursuant to EPCRA section 313(d)(2)(C) (*see* 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether the nonylphenol category meets the criteria of EPCRA section 313(d)(2)(C).

VI. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2012–0110. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

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VII. What are the Statutory and Executive Order Reviews associated with this action?

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 proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et. seq. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350–1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

For the 57 Form Rs and 13 Form As expected to be filed, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average, in the first year, $246,429 (based on 4,874 total burden hours) (Ref. 51). In subsequent years, the burden for collecting this information is estimated to average $117,350 (based on 2,321 total burden hours). These estimates include the time needed to become familiar with the requirement (first-year

only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection information; and transmit or otherwise disclose the information. The actual burden on any facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICRs need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in each ICR be amended, as appropriate.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA 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 will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration at 13 CFR 121.201; (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 today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the 70 entities estimated to be impacted by this proposed rule, 34 are small businesses. Of the affected small businesses, all 34 are projected to have cost-to-revenue impacts of less than 1% in both the first and subsequent years of the rulemaking. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. No small governments or small organizations are expected to be affected by this action. Thus this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document (Ref. 51). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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. EPA's economic analysis indicates that the total cost of this rule is estimated to be $246,722 in the first year of reporting. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

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 relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal Governments, EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing,

as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed 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. This proposed rule adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 14, 2013.

Bob Perciasepe,

Acting Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT–TO–KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

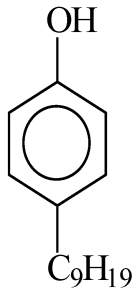
■ 2. The table in § 372.65 paragraph (c) is amended by adding an entry in alphabetical order for ''Nonylphenol'' to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(c) * * *

Category Name	Effective Date
* * * * * * *	
Nonylphenol	1/14



Where C_9H_{19} = Branched or straight alkyl chain

[FR Doc. 2013–14754 Filed 6–19–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapters II, III, IV, V, and VI

RIN 0648–XC637

Plan for Periodic Review of Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: The Regulatory Flexibility Act (RFA) requires that the National Marine Fisheries Service (NMFS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how NMFS will perform this review and describes the regulations that are being proposed for review during the current review-cycle.

DATES: Written comments must be received by NMFS by July 22, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0160, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0160,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Wendy Morrison, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope ''Comments on 610 review'').
- *Fax:* 301–713–1193; Attn: Wendy Morrison.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information

(e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Wendy Morrison, (301) 427–8504.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires that Federal agencies take into account how their regulations affect ''small entities,'' including small businesses, small Governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 requires that NMFS issue an Agenda of Regulations identifying rules the Agency is developing that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations that become effective after January 1, 1981, must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that NMFS publish annually in the **Federal Register** a list of rules it will review during the succeeding 12 months. The list must describe the rule, explain the need for it, give the legal basis for it, and invite public comment.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes five factors that NMFS will consider:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received concerning the rule from the public;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

NMFS will conduct reviews in such a way as to ensure that all rules for which a Final Regulatory Flexibility Analysis was prepared are reviewed within 10 years of the year in which they were originally issued. By December 31, 2013, NMFS will review all such rules issued during 2005 and 2006:

1. Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources. RIN 0648–AS47 (70 FR 10174, March 2, 2005). NMFS issued a final rule implementing Amendments 18 and 19 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. Amendments 18 and 19 amended the FMP to include the Voluntary Three-Pie Cooperative Program (hereinafter referred to as the Crab Rationalization Program). Congress amended the Magnuson-Stevens Act to require the Secretary of Commerce to approve and implement the Program. The action was necessary to increase resource conservation, improve economic efficiency, and improve safety. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

2. Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Western Alaska Community Development Quota Program. RIN 0648–AS00 (70 FR 15010, March 24, 2005). NMFS issued a final rule to revise regulations governing the Western Alaska Community Development Quota Program. These regulatory amendments simplified the processes for making quota transfers, for authorizing vessels as eligible to participate in the Community Development Quota fisheries, and for obtaining approval of alternative fishing plans. This action was necessary to improve NMFS's ability to effectively administer the Community Development Quota Program. It was intended to further the goals and objectives of the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area.

3. Pacific Halibut Fisheries; Subsistence Fishing. RIN 0648–AR88 (70 FR 16742, April 1, 2005). NMFS issued a final rule to amend the subsistence fishery rules for Pacific halibut in waters off Alaska. This action was necessary to address subsistence halibut management concerns in densely populated areas. This action was intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 and the Magnuson-Stevens Act.

4. Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery. RIN 0648–AS90 (70 FR 39664, July 11, 2005). NMFS issued a final rule to implement Amendment 10 to the FMP for the Scallop Fishery off Alaska, which modified the gear endorsements under the License Limitation Program for the scallop fishery. This action was necessary to allow increased participation by License Limitation Program license holders in the scallop fisheries off Alaska. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

5. Pacific Halibut Fisheries; Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program. RIN 0648–AT03 (70 FR 43328, July 27, 2005). NMFS issued a final rule to amend the Pacific halibut regulations for waters in and off Alaska. This action was necessary to modify the Individual Fishing Quota (IFQ) Program and the Western Alaska Community Development Quota (CDQ) Program to allow quota share holders in International Pacific Halibut Commission Regulatory Area 4C to fish their Area 4C IFQ or CDQ in Area 4D. This action was intended to enhance harvesting opportunities for halibut by IFQ and CDQ fishermen and was necessary to promote the objectives of the Northern Pacific Halibut Act of 1982 with respect to the IFQ and CDQ Pacific halibut fisheries, consistent with the regulations and resource management objectives of the International Pacific Halibut Commission and the North Pacific Fishery Management Council.

6. Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Bering Sea/Aleutian Islands King and Tanner Crabs; Industry Fee System for Fishing Capacity Reduction Loan. RIN 0648–AS46 (70 FR 54652, September 16, 2005). NMFS established regulations to implement an industry fee system for repaying a $97,399,357.11 Federal loan financing a fishing capacity reduction

program in the Bering Sea/Aleutian Islands King and Tanner Crab fishery. This action was necessary for implementing the fee system.

7. Fisheries of the Exclusive Economic Zone Off Alaska; Total Allowable Catch Amount for ''Other Species'' in the Groundfish Fisheries of the Gulf of Alaska. RIN 0648–AT92 (71 FR 12626, March 13, 2006). NMFS issued a final rule that implements Amendment 69 to the FMP for Groundfish of the Gulf of Alaska. Amendment 69 amended the manner in which the total allowable catch for the ''other species'' complex was annually determined in the Gulf of Alaska. The amendment allowed the total allowable catch amount for the ''other species'' complex to be set less than or equal to 5 percent of the sum of groundfish targets species in the Gulf of Alaska. This final rule also raised the maximum retainable amount of ''other species'' in the directed arrowtooth flounder fishery from 0 percent to 20 percent. This action was necessary to reduce the potential for overfishing those species in the ''other species'' complex in the Gulf of Alaska and to reduce the amount of ''other species'' required to be discarded in the arrowtooth flounder fishery. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

8. Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard. RIN 0648–AT04 (71 FR 17362, April 6, 2006). NMFS issued a final rule to implement a groundfish retention standard program in the Bering Sea and Aleutian Islands Management Area for trawl catcher/processor vessels that are 125 ft (38.1 m) length overall or greater and that are not listed American Fisheries Act catcher/processors vessels. This action was necessary to reduce bycatch and improve utilization of groundfish harvested by these non-American Fisheries Act trawl catcher/processor vessels. This action was intended to promote the management objectives of the Improved Retention/Improved Utilization program, the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area, and the Magnuson-Stevens Act.

9. Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program. RIN 0648–AS93 (71 FR 20346, April 20, 2006). NMFS issued a final rule to amend regulations supporting the North Pacific Groundfish Observer Program. This action was necessary to revise requirements facilitating observer data transmission, improve support for observers, and provide consistency with current regulations. The final rule promoted the goals and objectives of the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area and the FMP for Groundfish of the Gulf of Alaska.

10. Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources. RIN 0648–AU06 (71 FR 32862, June 7, 2006). NMFS issued a final rule implementing Amendment 20 to the FMP for Bering Sea/Aleutian Islands King and Tanner crabs. This action amends the Crab Rationalization Program to modify the allocation of harvesting shares and processing shares for Bering Sea Tanner crab (*Chionoecetes bairdi)* to allow this species to be managed as two separate stocks. This action was necessary to increase resource conservation and economic efficiency in the crab fisheries that were subject to the Program. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

11. Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Tagged Pacific Halibut and Tagged Sablefish. RIN 0648–AR09 (71 FR 36489, June 27, 2006). NMFS issued a final rule to exclude tagged halibut and tagged sablefish catches from deduction from fishermen's Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ) accounts. This action was necessary to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction, and to extend the same exclusion to halibut and sablefish harvested under the CDQ Program. This action was intended to improve administration of the IFQ and CDQ Programs, to enhance collection of scientific data from external tags, and to further the goals and objectives of the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area, the FMP for Groundfish of the Gulf of Alaska, and the halibut management program.

12. Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish, Crab, Salmon, and Scallop Fisheries of the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska. RIN 0648–AT09 (71 FR 36694, June 28, 2006). NMFS issued a final rule implementing Amendments 78 and 65 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area, Amendments 73 and 65 to the FMP for Groundfish of the Gulf of Alaska, Amendments 16 and 12 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs, Amendments 7 and 9 to the FMP for the Scallop Fishery off Alaska, and Amendments 7 and 8 to the FMP for Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska. These amendments revised the FMPs by identifying and describing essential fish habitat, designating habitat areas of particular concern, and included measures to minimize to the extent practicable adverse effects on essential fish habitat. This action was necessary to protect important habitat features to sustain managed fish stocks.

13. Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Crab Economic Data Reports. RIN 0648–AU44 (71 FR 38112, July 5, 2006). NMFS issued a final rule to implement revision of the annual economic data reports submission deadline from May 1 to June 28. This action was necessary to provide adequate time for crab harvesters and processors participating in the Bering Sea and Aleutian Islands Crab Rationalization Program to submit accurate and complete data on an economic data report for the previous fishing year. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act.

14. Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources. RIN 0648–AU24 (71 FR 38298, July 6, 2006). NMFS issued a final rule implementing changes to the regulations for the Crab Rationalization Program. This action was necessary to correct two discrepancies in the scope of the sideboard protections for Gulf of Alaska groundfish fisheries provided in a previous rulemaking. Specifically, this action removed the sideboard restrictions from vessels that did not generate Bering Sea snow crab (*Chionoecetes opilio*) quota share and applied the sideboards to federally permitted vessels operating in the State of Alaska parallel fisheries. This action was intended to promote the goals and objectives of the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs, the Magnuson-Stevens Act, and other applicable law.

15. Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources. RIN 0648–AU37 (71 FR 40030, July 14, 2006). NMFS issued a final rule to implement Amendment 21 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. This action made

changes to the arbitration system in the Bering Sea and Aleutian Islands Crab Rationalization Program by modifying the timing for harvesters and processors to match harvesting and processing shares, and the timing for initiating arbitration proceedings to resolve price and other delivery disputes. This action was necessary to increase resource conservation and economic efficiency in the crab fisheries that are subject to the Crab Rationalization Program. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

16. Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-pollock Groundfish Fishery. RIN 0648–AU42 (71 FR 57696, September 29, 2006). NMFS issued a final rule implementing the Bering Sea and Aleutian Islands Catcher Processor Capacity Reduction Program for the longline catcher processor subsector of the Bering Sea and Aleutian Islands non-pollock groundfish fishery, in compliance with the FY 2005 Appropriations Act. This program was voluntary and permit holders of the Reduction Fishery (Subsector Members) were eligible to participate. Subsector Members were required to sign and abide by the Capacity Reduction Agreement and, if their offers were selected, a Fishing Capacity Reduction Contract with the U.S. Government. These key components of the Capacity Reduction Plan were prepared by the Freezer Longline Conservation Cooperative and were implemented by the final regulations. Subsector Members participating in the Reduction Program received up to $36 million in exchange for relinquishing valid non-interim Federal License Limitation Program BSAI groundfish licenses endorsed for catcher processor fishing activity, Catcher/Processor, Pacific cod, and hook and line gear, as well as any present or future claims of eligibility for any fishing privilege based on such permit and additionally, any future fishing privilege of the vessel named on the permit. Individual fishing quota shares were excluded from relinquishment. The intent of this final rule was to permanently reduce harvesting capacity in the fishery, which should result in increased harvesting productivity for postreduction Subsector Members and help with conservation and management of the fishery.

17. Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources. RIN 0648–AT71 (71 FR 67210, November 20, 2006). NMFS issued a final rule to implement Amendment 68 to the FMP for Groundfish of the Gulf of Alaska. This action implemented statutory provisions for the Central Gulf of Alaska Rockfish Pilot Program. This action was necessary to enhance resource conservation and improve economic efficiency for harvesters and processors who participate in the Central Gulf of Alaska rockfish fishery. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

18. Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications, General Category Effort Controls, and Catch-and-Release Provision. RIN 0648–AR86 (70 FR 10896, March 7, 2005). NMFS announced the final initial 2004 fishing year specifications for the Atlantic bluefin tuna fishery to set bluefin tuna quotas for each of the established domestic fishing categories, to set General category effort controls, and to establish a catch-and-release provision for recreational and commercial bluefin tuna handgear vessels during a respective quota category closure. This action was necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas, as required by the Atlantic Tunas Convention Act, and to achieve domestic management objectives under the Magnuson-Stevens Act.

19. Atlantic Highly Migratory Species; Recreational Atlantic Blue and White Marlin Landings Limit; Amendments to the FMP for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish. RIN 0648–AQ65 (71 FR 58058, October 2, 2006). NMFS finalized the Consolidated Highly Migratory Species FMP, which changed certain management measures, adjusted regulatory framework measures, and continued the process for updating Highly Migratory Species essential fish habitat. The final rule: Established mandatory workshops for commercial fishermen and shark dealers; implemented complementary time/area closures in the Gulf of Mexico; implemented criteria for adding new or modifying existing time/area closures; addressed rebuilding and overfishing of northern albacore tuna and finetooth sharks; implemented recreational management measures for Atlantic billfish; modified bluefin tuna General Category subperiod quotas and simplified the management process of bluefin tuna; changed the fishing year for tunas, swordfish, and billfish to a calendar year; authorized speargun fishing gear in the recreational fishery for bigeye, albacore, yellowfin, and skipjack tunas; authorized buoy gear in the commercial swordfish handgear fishery; clarified the allowance of secondary gears (also known as cockpit gears); and clarified existing regulations. This final rule also announced the decision regarding a petition for rulemaking regarding closure areas for spawning bluefin tuna in the Gulf of Mexico. The Consolidated Highly Migratory Species FMP combines the management of all Atlantic HMS into one FMP, and combines and simplifies the objectives of the previous FMPs.

20. Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications. RIN 0648–AR51 (70 FR 303, January 4, 2005). NMFS issued final specifications for the 2005 and 2006 summer flounder fisheries and for the 2005 scup and black sea bass fisheries, and made preliminary adjustments to the 2005 commercial quotas for these fisheries. This final rule specified allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action prohibited federally permitted commercial vessels from landing summer flounder in Delaware in 2005. Regulations governing the summer flounder fishery required publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota was available for landing summer flounder in Delaware in 2005. This action also made changes to the regulations regarding the commercial scup fishery. The intent of this action was to establish allowed 2005 harvest levels and other measures to attain the target fishing mortality or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass FMP, and to reduce bycatch and improve the efficiency of the commercial scup fishery.

21. Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework 16 and Framework 39. RIN 0648–AR55 (70 FR 2821, January 18, 2005). NMFS published this final rule to implement measures previously approved, but not implemented under Framework 16 to the Atlantic Sea Scallop FMP and Framework 39 to the Northeast Multispecies FMP. The implementation of these measures was delayed, pending approval of reporting and recordkeeping requirements by the Office of Management and Budget. This final rule

allowed general category scallop vessels to fish in the Northeast multispecies closed area access program, provided that they complied with new recordkeeping and reporting requirements. The Office of Management and Budget approved the reporting and recordkeeping requirements for vessels with general category scallop permits, as required under the Paperwork Reduction Act. The intent of these frameworks was to allow the scallop fishery to access the scallop resource within portions of the NE multispecies closed areas during specified seasons, and ensure that NE multispecies catches by scallop vessels are consistent with the Multispecies FMP.

22. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 2. RIN 0648–AQ25 (70 FR 21927, April 28, 2005). NMFS implemented approved measures contained in Amendment 2 to the Monkfish FMP. Amendment 2 was developed to address essential fish habitat and bycatch issues, and to revise the FMP to address several issues raised during the public scoping process. This rule implemented the following measures: A new limited access permit for qualified vessels fishing south of 38°20′ N. lat.; an offshore monkfish fishery in the Southern Fishery Management Area; a maximum roller-gear disc diameter of 6 inches (15.2 cm) for trawl gear vessels fishing in the Southern Fishery Management Area; closure of two deep-sea canyon areas to all gears when fishing under the monkfish days-at-sea program; establishment of a research days-at-sea set-aside program and a days-at-sea exemption program; a North Atlantic Fisheries Organization Regulated Area Exemption Program; adjustments to the monkfish incidental catch limits; a decrease in the monkfish minimum size in the Southern Fishery Management Area; removal of the 20-day block requirement; and new additions to the list of actions that can be taken under the framework adjustment process contained in the FMP. The intent of this action was to provide efficient management of the monkfish fishery and to meet conservation objectives. Also, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and publishes the Office of Management and Budget control numbers for these collections.

23. Fisheries of the Northeastern United States; Recordkeeping and Reporting Requirements; Regulatory Amendment to Modify Seafood Dealer Reporting Requirements. RIN 0648–AS87 (70 FR 21976, April 28, 2005). NMFS issued this final rule to amend the electronic reporting and recordkeeping regulations for federally permitted seafood dealers participating in the fisheries associated with the following FMPs: Summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and/or spiny dogfish fisheries. This action reduced the submission schedule for dealer reports from daily to weekly, eliminated duplicate reporting of certain species, and clarified existing reporting requirements. This action also allowed vessel operator permits issued by the Southeast Region to satisfy Northeast vessel operator permitting requirements. The purpose of this action was to reduce the reporting burden on seafood dealers, improve data quality, simplify compliance, and clarify existing requirements.

24. Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 40B. RIN 0648–AS33 (70 FR 31323, June 1, 2005). Framework Adjustment 40B was developed by the New England Fishery Management Council to complete necessary modifications to existing effort control programs implemented under Amendment 13 to the Northeast Multispecies FMP. The intent of the rule was to improve the effectiveness of these programs, to create additional opportunities for commercial fishing vessels in the fishery to target healthy groundfish stocks, and to increase the information available to assess groundfish bycatch in the herring fishery. This final rule implemented several revisions to the Days-at-Sea Leasing and Transfer Programs, modified provisions for the Closed Area II Yellowtail Flounder Special Access Program, revised the allocation criteria for the Georges Bank Cod Hook Sector, established a Days-at-Sea credit for vessels standing by an entangled whale, implemented new notification requirements for Category 1 herring vessels, and removed the net limit for Trip gillnet vessels.

25. Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab FMP. RIN 0648–AS35 (70 FR 44066, August 1, 2005). NMFS issued final regulations to implement Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab FMP. This final rule modified the existing annual review and specification process by allowing specifications to be set for up to 3 years at a time, and continued the current target total allowable catch. The purpose of this action is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery, and provide consistency and predictability to the industry.

26. Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 17. RIN 0648–AT10 (70 FR 48860, August 22, 2005). This final rule implemented Framework 17 to the Atlantic Sea Scallop FMP, which was developed and submitted by the New England Fishery Management Council and approved by NMFS. Framework 17 required that vessels issued a general category scallop permit and that intended to land over 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, install and operate vessel monitoring systems. Framework 17 also allowed general category scallop vessels with vessel monitoring systems units to turn off (powerdown) their vessel monitoring systems units after they had offloaded scallops and while they were tied to a fixed dock or mooring. Finally, Framework 17 revised the broken trip adjustment provision for limited access scallop vessels fishing in the Sea Scallop Area Access Program. The intent of this action was to provide more complete monitoring of the general category scallop fleet, to reduce vessel monitoring systems operating costs, and to eliminate a provision that may have a negative influence on vessel operator decisions at sea and facilitate safety.

27. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 41. RIN 0648–AT08 (70 FR 54302, September 14, 2005). This final rule implemented Framework Adjustment 41 to the Northeast Multispecies FMP, which expanded participation in the existing Closed Area I Hook Gear Haddock Special Access Program to all Northeast multispecies limited access days-at-sea vessels fishing with hook gear. This action also modified some of the management measures currently applicable to the Georges Bank Cod Hook Sector vessels when declared into the CA I Hook Gear Haddock Special Access Program by including modification of the season, haddock total allowable catch, and restricting vessels to fishing only inside the Special Access Program area on trips declared into the Special Access Program. In

addition, NMFS clarified regulations pertaining to fishing in the Eastern U.S./Canada Haddock Special Access Program Pilot Program Area. This action was intended to mitigate the economic and social impacts resulting from Amendment 13 to the FMP and to meet the conservation and management requirements of the Magnuson-Stevens Act.

28. Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 13 and Framework Adjustment 40–A. RIN 0648–AS80 (70 FR 76422, December 27, 2005). This rule corrected inadvertent errors and omissions found in the April 27, 2004, final rule implementing Amendment 13 and the November 19, 2004, interim final rule implementing Framework Adjustment 40–A to the Northeast Multispecies FMP. This rule also clarified specific regulations to maintain consistency with, and to accurately reflect, the intent of Amendment 13 and Framework 40–A to the FMP. Finally, this rule revised the process for selecting total allowable catch allocations for the U.S./Canada Management Areas pursuant to a court order. Amendment 13 was developed to end overfishing and rebuild NE multispecies stocks. Framework 40–A was developed to provide additional opportunities for NE multispecies vessels to target healthy stocks in an effort to help achieve optimum yield from the fishery and to mitigate some of the economic impacts resulting from effort reductions implemented under Amendment 13. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

29. Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2006 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2006 Quota Adjustments; 2006 Summer Flounder Quota for Delaware. RIN 0648–AT27 (70 FR 77060, December 29, 2005). NMFS issued final specifications for the 2006 summer flounder, scup, and black sea bass fisheries, and made preliminary adjustments to the 2006 commercial quotas for these fisheries. This final rule specified allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action prohibited federally permitted commercial vessels from landing summer flounder in Delaware in 2006. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware in 2006. This action also defined the total length measurement for black sea bass and made changes to the regulations regarding the commercial black sea bass pot/trap fishery. The intent of this action was to establish harvest levels and other measures to attain the target fishing mortality or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass FMP, to reduce bycatch, and to improve the efficiency of the commercial black sea bass fishery.

30. Fisheries of the Northeastern United States; Spiny Dogfish; Framework Adjustment 1; Establishing a Multipleyear Specifications Process. RIN 0648–AT29 (71 FR 3016, January 19, 2006). NMFS announced the implementation of Framework Adjustment 1 to the Spiny Dogfish FMP, which allowed the specification of commercial quotas and other management measures for up to 5 years. This framework adjustment was intended to improve management of the Northeast Atlantic stock of Spiny Dogfish.

31. Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework 18. RIN 0648–AT25 (71 FR 33211, June 8, 2006). This final rule implemented Framework Adjustment 18 to the Atlantic Sea Scallop FMP, which was developed by the New England Fishery Management Council. The following management measures were implemented by this rule: Scallop fishery specifications for 2006 and 2007; scallop Area Rotation Program adjustments; and revisions to management measures that would improve administration of the FMP. In addition, a seasonal closure of the Elephant Trunk Access Area was implemented to reduce potential interactions between the scallop fishery and sea turtles, and to reduce finfish and scallop bycatch mortality. Framework 18 was developed to meet the FMP's requirement to adjust biennially the management measures for the scallop fishery. The FMP requires the biennial adjustments to ensure that measures meet the target fishing mortality rate and other goals of the FMP and achieve optimum yield from the scallop resource on a continuing basis.

32. Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 6. RIN 0648–AT26 (71 FR 42315, July 26, 2006). NMFS issued this final rule to implement measures contained in Framework Adjustment 6 to the Summer Flounder, Scup, and Black Sea Bass FMP that allowed regional conservation equivalency in the summer flounder recreational fishery. The intent was to provide flexibility and efficiency to the management of the summer flounder recreational fishery, specifically by expanding the suite of management tools available when conservation equivalency was implemented. In addition, this final rule included three administrative modifications to the existing regulations for clarification purposes.

33. Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 43. RIN 0648–AU33 (71 FR 46871, August 15, 2006). NMFS implemented Framework Adjustment 43 to the Northeast Multispecies FMP, which addressed the incidental catch of Northeast multispecies by vessels fishing for Atlantic herring by establishing a Herring Exempted Fishery. Vessels issued a Category 1 Atlantic herring fishing permit were authorized to possess incidentally caught haddock until the catch of haddock reached the level specified as an incidental haddock catch cap; upon attainment of the haddock catch cap, all herring vessels were limited to 2,000 lb (907 kg) of herring per trip, if any of the herring on board was caught within the Gulf of Maine/Georges Bank Herring Exemption Area defined in Framework 43. Herring Category 1 vessels were also authorized to possess up to 100 pounds (45 kg) of other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake), and were required to provide advanced notification of their intent to land for purposes of enforcement. Atlantic herring processors and dealers that sort herring catches as part of their operations were required to cull and report all haddock.

34. Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Great South Channel Scallop Dredge Exemption Area. RIN 0648–AU50 (71 FR 51779, August 31, 2006). NMFS issued this final rule to modify the regulations implementing the Northeast Multispecies FMP to allow vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit, when not fishing under a scallop days-at-sea limitation, to fish for scallops with small dredges (combined width not to exceed 10.5 ft) within the Great South Channel Scallop Dredge Exemption Area. This final rule responded to a request from the fishing industry to add this area to the list of exempted fisheries. The intent of this action was

to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

35. Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Framework Adjustment 42; Monkfish Fishery, Framework Adjustment 3. RIN 0648–AT24 (71 FR 62156, October 23, 2006). This final rule implemented Framework Adjustment 42 to the Northeast Multispecies FMP and Framework Adjustment 3 to the Monkfish FMP. Framework Adjustment 42, developed by the New England Fishery Management Council, was a biennial adjustment to the Northeast Multispecies FMP that set forth a rebuilding program for Georges Bank yellowtail flounder and modified Northeast multispecies fishery management measures to reduce fishing mortality rates on six other groundfish stocks in order to maintain compliance with the rebuilding programs of the FMP. Framework Adjustment 42 also modified and continued specific measures to mitigate the economic and social impacts of Amendment 13 to the FMP and allowed harvest levels to approach optimum yield. This final rule also implements the Monkfish FW 3 provision prohibiting a limited access monkfish days-at-sea vessel that also possesses a limited access NE multispecies days-at-sea permit from using a monkfish days-at-sea when participating in the Regular B days-at-sea program.

36. Pacific Halibut Fisheries; Catch Sharing Plan; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments. RIN 0648–AS61 (70 FR 20304, April 19, 2005). The Assistant Administrator for Fisheries, on behalf of the International Pacific Halibut Commission, publishes annual management measures to govern the Pacific halibut fishery. These measures are promulgated as regulations by the International Pacific Halibut Commission and accepted by the Secretary of State. The Assistant Administrator for Fisheries announced modifications to the Catch Sharing Plan for Area 2A and implementing regulations for 2005, and announced approval of the Area 2A Plan. The Assistant Administrator for Fisheries also announced related changes to management measures in the recreational Pacific Coast groundfish fisheries, which are authorized by the Pacific Coast Groundfish FMP. These actions were intended to enhance the conservation of Pacific halibut and groundfish and further the goals and objectives of the Pacific Fishery Management Council.

37. Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction. RIN 0648–AS27 (70 FR 22808, May 3, 2005). This final rule established the 2005 fishery specifications for Pacific whiting in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish FMP. It also adjusted the bycatch limits in the whiting fishery. This **Federal Register** document also corrected the final rule implementing the specifications and management measures, which was published December 23, 2004. These specifications included the level of the acceptable biological catch, optimum yield, tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action was to establish allowable harvest levels of whiting based on the best available scientific information.

38. Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp; Industry Fee System for Fishing Capacity Reduction Loan. RIN 0648–AS38 (70 FR 40225, July 13, 2005 and 71 FR 27, January 3, 2006). NMFS established regulations to implement an industry fee system for repaying a $35,662,471 Federal loan. The loan financed most of the cost of a fishing capacity reduction program in the Pacific Coast groundfish fishery. The industry fee system imposed fees on the value of future groundfish landed in the trawl portion (excluding whiting catcher-processors) of the Pacific Coast groundfish fishery. It also imposed fees on coastal Dungeness crab and pink shrimp landed in the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp. This action's intent was to implement the industry fee system.

39. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures. RIN 0648–AU00 (71 FR 8489, February 17, 2006). NMFS implemented revisions to the 2006 commercial and recreational groundfish fishery management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. Management measures that were new for 2006 were intended to: Achieve but not exceed optimum yields; prevent overfishing; rebuild overfished species; and reduce and minimize the incidental catch and discard of overfished and depleted stocks. NMFS was also revising the 2006 darkblotched rockfish optimum yield, at the request of the Pacific Fishery Management Council. These actions, which are authorized by the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act, were intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

40. Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Limited Entry Fixed Gear Sablefish Fishery Permit Stacking Program. RIN 0648–AP38 (71 FR 10614, March 2, 2006). NMFS implemented portions of Amendment 14 to the Pacific Coast Groundfish FMP. Amendment 14 created a permit stacking program for limited entry permits with sablefish endorsements. Amendment 14 was intended to provide greater season flexibility for sablefish fishery participants and to improve safety in the primary sablefish fishery.

41. Pacific Halibut Fisheries; Catch Sharing Plan. RIN 0648–AT56 (71 FR 10850, March 3, 2006). The Assistant Administrator for Fisheries, on behalf of the International Pacific Halibut Commission, published annual management measures promulgated as regulations by the International Pacific Halibut Commission and approved by the Secretary of State governing the Pacific halibut fishery. The Assistant Administrator for Fisheries also announced modifications to the Catch Sharing Plan for Area 2A and implementing regulations for 2006, and announced approval of the Area 2A Catch Sharing Plan. These actions were intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council and the North Pacific Fishery Management Council.

42. Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery. RIN 0648–AT98 (71 FR 27408, May 11, 2006). NMFS implemented the regulatory provisions of Amendment 19 to the Pacific Coast Groundfish FMP. Amendment 19 provided for a comprehensive program to describe and protect essential fish habitat for Pacific Coast Groundfish. The management measures to implement Amendment 19, which were authorized by the FMP and the Magnuson-Stevens Act, were intended to minimize, to the extent practicable, adverse effects to essential fish habitat from fishing. The measures

included fishing gear restrictions and prohibitions, areas that are closed to bottom trawling, and areas that are closed to all fishing that contacts the bottom.

43. Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction. RIN 0648–AU39 (71 FR 29257, May 22, 2006). This final rule established the 2006 fishery specifications for Pacific whiting in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish FMP. It also adjusted the bycatch limits in the whiting fishery. This **Federal Register** document also corrected the final rule implementing the specifications and management measures, which was published December 23, 2004. These specifications included the level of the acceptable biological catch, optimum yield, tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action was to establish allowable harvest levels of whiting based on the best available scientific information.

44. Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 18. RIN 0648–AU12 (71 FR 66122, November 13, 2006). NMFS issued this final rule to implement Amendment 18 to the Pacific Coast Groundfish FMP. Amendment 18 responded to a court order by setting the Pacific Fishery Management Council's bycatch minimization policies and requirements into the FMP.

45. Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Amendment 16–4; Pacific Coast Salmon Fishery. RIN 0648–AU57 (71 FR 78638, December 29, 2006). This final rule implemented Amendment 16–4 to the Pacific Coast Groundfish FMP and set the 2007–2008 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. Amendment 16–4 modified the FMP to implement revised rebuilding plans for seven overfished species: Bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish. Groundfish harvest specifications and management measures for 2007–2008 were intended to: Achieve but not exceed optimum yields; prevent overfishing; rebuild overfished species; reduce and minimize the bycatch and discard of overfished and depleted stocks; provide harvest opportunity for the recreational and commercial fishing sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations for nonoverfished species. Together, Amendment 16–4 and the 2007–2008 harvest specifications and management measures were intended to rebuild overfished stocks as soon as possible, taking into account the status and biology of the stocks, the needs of fishing communities, and the interaction of the overfished stocks within the marine ecosystem. In addition to the management measures implemented specifically for the groundfish fisheries, this rule implemented a new Yelloweye Rockfish Conservation Area off Washington State, which is closed to commercial salmon troll fishing to reduce incidental mortality of yelloweye rockfish in the salmon troll fishery.

46. Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program. RIN 0648–AQ92 (70 FR 29646, May 24, 2005). NMFS issued a final rule to implement Amendment 11 to the FMP for Pelagic Fisheries of the Western Pacific Region, which established a limited entry system for pelagic longline vessels fishing in waters of the U.S. exclusive economic zone around American Samoa. The action was necessary to effectively manage the pelagics fisheries around American Samoa. This final rule was intended to establish management measures that would stabilize effort in the fishery to avoid a ''boom and bust'' cycle of fishery development that could disrupt community participation and limit opportunity for substantial participation in the fishery by indigenous islanders.

47. Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Sea Turtle Mitigation Measures. RIN 0648–AQ91 (70 FR 69282, November 15, 2005). NMFS issued a final rule to reduce and mitigate interactions between sea turtles and fisheries managed under the FMP for the Pelagic Fisheries of the Western Pacific Region. This rule included requirements for attending protected species workshops, for handling, resuscitating, and releasing sea turtles that are hooked or entangled in fishing gear, and for fishing gear configuration. This action was undertaken in part to comply with the terms and conditions of a 2004 Biological Opinion on impacts on sea turtles by fisheries managed under the FMP.

48. Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery. RIN 0648–AS30 (70 FR 75075, December 19, 2005). NMFS issued a final rule implementing measures to further reduce the incidental catch of seabirds in the Hawaii-based longline fishery. Depending on the fishing method and area where the vessels operate, owners and operators of longline fishing vessels must either side-set (deploy longline gear from the side of the vessel rather than from the stern) or use a combination of other seabird mitigation measures to prevent seabirds from being accidentally hooked, entangled, and killed during fishing operations. NMFS also announced the availability of the Record of Decision for the ''Final Environmental Impact Statement, Seabird Interaction Avoidance Methods under the FMP for Pelagic Fisheries of the Western Pacific Region and Pelagic Squid Fishery Management under the FMP for Pelagic Fisheries of the Western Pacific Region and the High Seas Fishing Compliance Act.'' The Record of Decision announced that NMFS selected the Preferred Alternative, modified slightly, to cost-effectively further reduce the potentially harmful effects of the Hawaii-based longline fishery on seabirds.

49. Fisheries in the Western Pacific; Western Pacific Bottomfish and Seamount Groundfish Fisheries; Guam Bottomfish Management Measures. RIN 0648–AT94 (71 FR 64474, November 2, 2006). NMFS issued this final rule to implement Amendment 9 to the FMP for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region that prohibited large vessels, i.e., those 50 ft (15.2 m) or longer, from fishing for bottomfish in Federal waters within 50 nm (92.6 km) around Guam, and established Federal permitting and reporting requirements for these large bottomfish fishing vessels. This final rule was intended to maintain viable participation and bottomfish catch rates by small vessels in the fishery, to maintain traditional patterns of the bottomfish supply to local Guam markets, to provide for the collection of adequate fishery information for effective management, and to reduce the risk of local depletion of deepwater bottomfish stocks near Guam.

50. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Rebuilding Plan. RIN 0648–AP02 (70 FR 32266, June 2, 2005).

NMFS issued this final rule to implement Amendment 22 to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule provided the regulatory authority to implement a mandatory observer program for selected commercial and for-hire vessels in the Gulf of Mexico reef fish fishery. In addition, consistent with the requirements of the Magnuson-Stevens Act, Amendment 22 established a stock rebuilding plan, biological reference points, and stock status determination criteria for red snapper in the Gulf of Mexico. The intended effect of this final rule was to contribute to ending overfishing and rebuilding the red snapper resource. Finally, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections.

51. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Rebuilding Plan. RIN 0648–AS19 (70 FR 33385, June 8, 2005). NMFS issued this final rule to implement Amendment 23 to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule increased the minimum size limit for vermilion snapper to 11 inches (28 cm), total length, for the recreational and commercial sectors; established a 10-fish recreational bag limit for vermilion snapper within the existing 20-fish aggregate reef fish bag limit; and closed the commercial vermilion snapper fishery from April 22 through May 31 each year. In addition, consistent with the requirements of the Magnuson-Stevens Act, Amendment 23 established a stock rebuilding plan, biological reference points, and stock status determination criteria for vermilion snapper in the Gulf of Mexico. The intended effect of this final rule was to end overfishing and rebuild the vermilion snapper resource.

52. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 15. RIN 0648–AS53 (70 FR 39187, July 7, 2005). NMFS issued this final rule to implement Amendment 15 to the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. This final rule established a limited access system for the commercial fishery for Gulf and Atlantic migratory group king mackerel by capping participation at the current level. The final rule also changed the fishing year for Atlantic migratory group king and Spanish mackerel to March through February. The intended effects of this final rule were to provide economic and social stability in the fishery by preventing speculative entry into the fishery and to mitigate adverse impacts associated with potential quota closures.

53. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Reef Fish Limited Access System. RIN 0648–AS69 (70 FR 41161, July 18, 2005). NMFS issued this final rule to implement Amendment 24 to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established a limited access system for the commercial reef fish fishery in the Gulf of Mexico by capping participation at the current level. The intended effect of this final rule was to provide economic and social stability in the fishery by preventing speculative entry into the fishery.

54. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment to the FMPs of the U.S. Caribbean. RIN 0648–AP51 (70 FR 62073, October 28, 2005). NMFS issued this final rule to implement a comprehensive amendment prepared by the Caribbean Fishery Management Council to amend its Reef Fish, Spiny Lobster, Queen Conch, and Coral FMPs. The comprehensive amendment was designed to ensure the FMPs are fully compliant with the provisions of the Magnuson-Stevens Act. This final rule redefined the fishery management units for the FMPs; established seasonal closures; imposed gear restrictions and requirements; revised requirements for marking pots and traps; and prohibited the filleting of fish at sea. In addition, the comprehensive amendment established biological reference points and stock status criteria; established rebuilding schedules and strategies to end overfishing and rebuild overfished stocks; provided for standardized collection of bycatch data; minimized bycatch and bycatch mortality to the extent practicable; designated essential fish habitat and habitat areas of particular concern; and minimized adverse impacts on such habitat to the extent practicable. The intended effect of this final rule was to achieve optimum yield in the fisheries and provide social and economic benefits associated with maintaining healthy stocks.

55. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 6. RIN 0648–AS16 (70 FR 73383, December 12, 2005). NMFS issued this final rule to implement Amendment 6 to the FMP for the Shrimp Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. This final rule required an owner or operator of a trawler that harvests or possesses penaeid shrimp in or from the exclusive economic zone off the southern Atlantic states to obtain a commercial vessel permit for South Atlantic penaeid shrimp; required an owner or operator of a vessel in the South Atlantic rock shrimp or penaeid shrimp fishery to submit catch and effort reports and to carry an observer on selected trips; and required bycatch reduction devices in nets in the rock shrimp fishery. Amendment 6 also established stock status determination criteria for South Atlantic penaeid shrimp; revised the specifications of maximum sustainable yield and optimum yield for South Atlantic rock shrimp; revised the stock status determination criteria for South Atlantic rock shrimp; revised the bycatch reduction criterion for the certification of bycatch reduction devices; and transfered from the Council to the Regional Administrator, Southeast Region, responsibilities for the specification of the protocol for testing bycatch reduction devices. In addition, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections. The intended effects of this rule were to provide additional information for, and improve the effective management of, the shrimp fisheries off the southern Atlantic states and to correct and clarify the regulations applicable to other southern Atlantic fisheries.

56. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Essential Fish Habitat Amendment. RIN 0648–AS66 (70 FR 76216, December 23, 2005). NMFS issued this final rule to implement Generic Amendment 3 to the FMPs of the Gulf of Mexico, which was prepared by the Gulf of Mexico Fishery Management Council. Generic Amendment 3 amended each of the seven Council FMPs (shrimp, red drum, reef fish, coastal migratory pelagic resources, coral and coral reefs, stone crab, and spiny lobster) to describe and

identify essential fish habitat; minimize to the extent practicable the adverse effects of fishing on essential fish habitat; and encourage conservation and management of essential fish habitat. This final rule established additional habitat areas of particular concern, restricted fishing activities within habitat areas of particular concern, and required a weak link in bottom trawl gear. The intended effect of this final rule was to facilitate long-term protection of essential fish habitat and, thus, better conserve and manage fishery resources in the Gulf of Mexico.

57. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Commercial Grouper Fishery; Trip Limit. RIN 0648–AT12 (70 FR 77057, December 29, 2005). NMFS issued this final rule to implement a regulatory amendment to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established a 6,000-lb (2,722-kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. The intended effect of this final rule was to minimize the effects of derby fishing and prolong the fishing season.

58. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats. RIN 0648–AS70 (71 FR 28282, May 16, 2006). NMFS issued this final rule to implement Amendment 17 to the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, and Amendment 25 to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established a limited access system for charter vessel/headboat permits for the reef fish and coastal migratory pelagic fisheries in the exclusive economic zone of the Gulf of Mexico. In addition, this final rule incorporated a number of minor revisions to remove outdated regulatory text and to clarify regulatory text. The intended effect of this final rule was to provide for biological, social, and economic stability in these charter vessel/headboat fisheries.

59. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures. RIN 0648–AU04 (71 FR 34534, June 15, 2006). NMFS issued this final rule to implement the bag limit provisions of a regulatory amendment to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established a recreational bag limit for Gulf red grouper of one fish per person per day and prohibited the captain and crew of a vessel operating as a charter vessel or headboat from retaining any Gulf grouper, i.e., established a zero bag limit for captain and crew. The intended effect of this final rule was to help maintain recreational landings at levels consistent with the red grouper rebuilding plan.

60. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 18A. RIN 0648–AN09 (71 FR 45428, August 9, 2006). NMFS issued this final rule to implement Amendment 18A to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule prohibited vessels from retaining reef fish caught under the recreational size and bag/possession limits when commercial quantities of Gulf reef fish are on board; adjusted the number of persons allowed on board when a vessel with both commercial and charter vessel/headboat reef fish permits and a U.S. Coast Guard Certificate of Inspection is fishing commercially; prohibited use of Gulf reef fish, except sand perch or dwarf sand perch, as bait in any commercial or recreational fishery in the exclusive economic zone of the Gulf of Mexico, with a limited exception for crustacean trap fisheries; required a NMFS-approved vessel monitoring system on board vessels with Federal commercial permits for Gulf reef fish, including charter vessels/headboats with such commercial permits; and required owners and operators of vessels with Federal commercial or charter vessel/headboat permits for Gulf reef fish to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of incidentally caught sawfish and sea turtles. This final rule also required annual permit application rather than application every 2 years. In addition, Amendment 18A revised the total allowable catch framework procedure to reflect current practices and terminology. The intended effects of this final rule were to improve enforceability and monitoring in the reef fish fishery in the Gulf of Mexico and to reduce mortality of incidentally caught sea turtles and smalltooth sawfish. Finally, NMFS informed the public of approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections.

61. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 13C. RIN 0648–AT75 (71 FR 55096, September 21, 2006). NMFS issued this final rule to implement Amendment 13C to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. Amendment 13C established management measures to end overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass and measures to allow moderate increases in recreational and commercial harvest of red porgy consistent with the rebuilding program for that stock. For the commercial fisheries, this final rule established restrictive quotas for snowy grouper, golden tilefish, vermilion snapper, and black sea bass and, after the quotas are met, prohibited all purchase and sale of the applicable species and restricted all harvest and possession to the applicable bag limit; established restrictive trip limits for snowy grouper and golden tilefish; required at least 2-inch (5.1-cm) mesh in the back panel of black sea bass pots; required black sea bass pots to be removed from the water after the quota was reached; changed the fishing year for black sea bass; increased the trip limit for red porgy; established a red porgy quota that would allow a moderate increase in harvest; and, after the red porgy quota was reached, prohibited all purchase and sale, and restricted all harvest and possession to the bag limit. For the recreational fisheries, this final rule reduced the bag limits for snowy grouper, golden tilefish, and black sea bass; increased the minimum size limit for vermilion snapper and black sea bass; changed the fishing year for black sea bass; and increased the bag limit for red porgy. The intended effects of this final rule were to eliminate or phase out overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass; and increase red porgy harvest consistent with an updated stock assessment and rebuilding plan to achieve optimum yield. Finally, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of

Management and Budget control numbers for those collections.

62. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 13. RIN 0648–AS15 (71 FR 56039, September 26, 2006). NMFS issued this final rule to implement Amendment 13 to the FMP for the Shrimp Fishery of the Gulf of Mexico, as prepared and submitted by the Gulf of Mexico Fishery Management Council. This final rule established a 10-year moratorium on issuance of Federal Gulf shrimp vessel permits; required owners of vessels fishing for or possessing royal red shrimp from the Gulf of Mexico exclusive economic zone to have a royal red shrimp endorsement; required owners or operators of all federally permitted Gulf shrimp vessels to report information on landings and vessel and gear characteristics; and required vessels selected by NMFS to carry observers and/or install an electronic logbook provided by NMFS. In addition, Amendment 13 established biological reference points for penaeid shrimp and status determination criteria for royal red shrimp. The intended effects of this final rule were to provide essential fisheries data, including bycatch data, needed to improve management of the fishery and to control access to the fishery. Finally, NMFS informed the public of the approval by the Office of Management and Budget of the collection of information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections.

63. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures. RIN 0648–AU04 (71 FR 66878, November 17, 2006). NMFS issued this final rule to implement the seasonal closure provisions of a regulatory amendment to the FMP for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone. The intended effect of this final rule was to help maintain recreational landings at levels consistent with the red grouper rebuilding plan while minimizing potential shift of fishing effort to associated grouper species.

64. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26. RIN 0648–AS67 (71 FR 67447, November 22, 2006). NMFS issued this final rule to implement Amendment 26 to the FMP for the Reef Fish Fishery of the Gulf of Mexico. Amendment 26 established an individual fishing quota program for the commercial red snapper sector of the reef fish fishery in the Gulf of Mexico. Initial participants in the individual fishing quota program received percentage shares of the commercial quota of red snapper based on specified historical landings criteria. The percentage shares of the commercial quota equate to annual individual fishing quota allocations. In addition, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections. The intended effect of this rule was to manage the commercial red snapper sector of the reef fish fishery to preserve its long-term economic viability and to achieve optimum yield from the fishery.

65. Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries; Data Collection Requirements for U.S. Commercial and Recreational Charter Fishing Vessels. RIN 0648–AP42 (70 FR 7022, February 10, 2005). NMFS announced approval by the Office of Management and Budget of collection-of-information requirements pertaining to permits, logbooks, vessel monitoring systems, and pre-trip notifications contained in the final rule to implement the approved portions of the U.S. West Coast Highly Migratory Species FMP. The FMP was partially approved on February 4, 2004, and the final rule to implement the approved portions of the HMS FMP was published in the **Federal Register** on April 7, 2004. At that time, the FMP final rule contained collection-of-information requirements subject to the Paperwork Reduction Act that were undergoing Office of Management and Budget review. The intent of this notice was to inform the public of the effective date of the requirements approved by Office of Management and Budget. Reporting requirements of the FMP are needed to obtain sufficient information for management while minimizing duplication.

66. Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries; Data Collection Requirements for U.S. Commercial and Recreational Charter Fishing Vessels. RIN 0648–AT97 (70 FR 67349, November 7, 2005). NMFS announced approval by the Office of Management and Budget of collection-of-information requirements pertaining to vessel identification contained in the final rule to implement the approved portions of the U.S. West Coast Highly Migratory Species FMP, and the effectiveness of those requirements. On February 4, 2004, NMFS partially approved the HMS FMP, and the final rule to implement the approved portions of the HMS FMP was published in the **Federal Register** on April 7, 2004. The HMS FMP final rule contained vessel identification requirements subject to the Paperwork Reduction Act that, at the time of publication, were still undergoing Office of Management and Budget review. This action informed the public of the effective date of the requirement approved by Office of Management and Budget. Vessel identification requirements are necessary for proper enforcement of the FMP.

67. Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 11. RIN 0648–AT11 (71 FR 36999, June 29, 2006). NMFS issued this final rule to implement Amendment 11 to the Coastal Pelagic Species FMP, which changed the framework for the annual apportionment of the Pacific sardine harvest guideline along the U.S. Pacific coast. The purpose of this final rule was to achieve optimal utilization of the Pacific sardine resource and equitable allocation of the harvest opportunity for Pacific sardine.

68. Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery. RIN 0648–AP18 (71 FR 13027, March 14, 2006). NMFS amended regulations to modify the management measures applicable to the Federal American lobster (*Homarus americanus*) fishery. This action was in response to recommendations by the Atlantic States Marine Fisheries Commission in Addenda II and III to Amendment 3 of the Interstate FMP for American Lobster. The lobster management measures were intended to increase protection to American lobster broodstock throughout the stock's range, and applied to lobsters harvested in one or more of seven Lobster Conservation Management Areas. In addition, NMFS clarified existing Federal lobster regulations.

69. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean. RIN 0648–AS05 (70 FR 19004, April 12, 2005). NMFS issued a final rule to implement resolutions adopted by the Inter-American Tropical Tuna Commission and by the Parties to the Agreement on the International Dolphin Conservation Program. The final rule prohibited activities that undermine the

effective implementation and enforcement of the Marine Mammal Protection Act, Dolphin Protection Consumer Information Act, and International Dolphin Conservation Program Act.

70. Endangered and Threatened Species; Designation of Critical Habitat for Seven Evolutionarily Significant Units of Pacific Salmon and Steelhead in California. RIN 0648–AO04 (70 FR 52488, September 2, 2005). NMFS issued a final rule designating critical habitat for two Evolutionarily Significant Units of chinook salmon (*Oncorhynchus tshawytscha*) and five Evolutionarily Significant Units of steelhead (*O. mykiss*) listed as of the date of this designation under the Endangered Species Act of 1973, as amended. The specific areas designated in the rule text included approximately 8,935 net mi (14,269 km) of riverine habitat and 470 mi^2 (1,212 km^2) of estuarine habitat in California. Some of the areas designated are occupied by two or more Evolutionarily Significant Units. The annual net economic impacts of changes to Federal activities as a result of the critical habitat designations were estimated to be approximately $81,647,439. This rule was issued to meet the timeline established in litigation between NMFS and Pacific Coast Federation of Fishermen's Associations (Civ. No. 03–1883).

71. Endangered and Threatened Species; Designation of Critical Habitat for 12 Evolutionarily Significant Units of West Coast Salmon and Steelhead in Washington, Oregon, and Idaho. RIN 0648–AQ77 (70 FR 52630, September 2, 2005). NMFS issued a final rule designating critical habitat for 12 Evolutionarily Significant Units of West Coast salmon (chum, *Oncorhynchus keta;* sockeye, *O. nerka;* chinook, *O. tshawytscha;* and steelhead, *O. mykiss*) listed as of the date of this designation under the Endangered Species Act of 1973, as amended. The specific areas designated in the rule text included approximately 20,630 mi (33,201 km) of lake, riverine, and estuarine habitat in Washington, Oregon, and Idaho, as well as approximately 2,312 mi (3,721 km) of marine nearshore habitat in Puget Sound. Some of the areas designated are occupied by two or more Evolutionarily Significant Units. The annual net economic impacts of changes to Federal activities as a result of critical habitat designation were estimated to be approximately $201.2 million. Fish and wildlife conservation actions for the Federal Columbia River Power System and other major hydropower projects in the Pacific Northwest were expected to generate another $500–700 million in annual costs, including forgone power revenues. While these hydropower projects were covered by Endangered Species Act section 7, the conservation actions that generated these costs were imposed by a wide variety of laws. This rule was being issued to meet the timeline established in litigation between NMFS and Pacific Coast Federation of Fishermen's Associations (Civ. No. 03–1883).

72. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan Regulations; Sea Turtle Conservation; Restrictions to Fishing Activities. RIN 0648–AR39 (71 FR 24776, April 26, 2006). NMFS issued this final rule to implement regulatory and nonregulatory management measures to reduce the incidental mortality and serious injury of the western North Atlantic coastal bottlenose dolphin stock (*Tursiops truncatus*) in the mid-Atlantic coastal gillnet fishery and eight other coastal fisheries operating within the dolphin's distributional range. This final rule also revised the large mesh size restriction under the mid-Atlantic large mesh gillnet rule for conservation of endangered and threatened sea turtles to provide consistency among Federal and state management measures. The measures contained in this final rule implemented gillnet effort reduction, gear proximity requirements, gear or gear deployment modifications, and outreach and education measures to reduce dolphin bycatch below the marine mammal stock's potential biological removal level. The rule combined two actions under different statutory authorities, to: (1) Implement the Bottlenose Dolphin Take Reduction Plan under the Marine Mammal Protection Act; and (2) amend the Endangered Species Act mid-Atlantic large mesh gillnet rule.

73. Sea Turtle Conservation; Modification to Fishing Activities. RIN 0648–AU10 (71 FR 36024, June 23, 2006). NMFS required that any offshore pound net leader in the Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0′ N. lat. and west of 76°13.0′ W. long., and all waters south of 37°13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James and York Rivers downstream of the first bridge in each tributary, during the period of May 6 through July 15, meet the definition of a modified pound net leader. Without this final rule, existing regulations would continue to prohibit all offshore pound net leaders in that area during that time frame. While restrictions promulgated in 2004 on pound net leaders in the Virginia waters of the Chesapeake Bay outside the aforementioned area remained in effect, this final rule created an exception to those restrictions by allowing the use of modified pound net leaders in this area. This action, taken under the Endangered Species Act of 1973, responded to new information generated by gear research. It was intended to conserve sea turtles listed as threatened under the Endangered Species Act and to help enforce the provisions of the Endangered Species Act, including the provisions against takes of endangered species, while enabling fishermen to use leaders during the regulated period.

74. Endangered and Threatened Species; Revision of Critical Habitat for the Northern Right Whale in the Pacific Ocean. RIN 0648–AT84 (71 FR 38277, July 6, 2006). NMFS issued a final rule to revise the current critical habitat for the northern right whale (*Eubalaena glacialis*) by designating additional areas within the North Pacific Ocean. Two specific areas were designated, one in the Gulf of Alaska and another in the Bering Sea, comprising a total of approximately 95,200 square kilometers (36,750 square miles) of marine habitat. As described in the impacts analysis prepared for this action, we considered the economic impacts, impacts to national security, and other relevant impacts and concluded that the benefits of exclusion of any area from the critical habitat designation do not outweigh the benefits of inclusion. This final rule was issued to meet the deadline established in a remand order of the United States District Court for the Northern District of California.

75. Endangered and Threatened Wildlife; Sea Turtle Conservation. RIN 0648–AS92 (71 FR 50361, August 25, 2006). NMFS issued this final rule to require sea turtle conservation measures for all sea scallop dredge vessels fishing south of 41°9.0′ N. latitude from May 1 through November 30 each year. All vessels with a sea scallop dredge and that are required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, were required to modify their dredge(s) when fishing south of 41°9.0′ N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone. This action was necessary to help reduce mortality and injury to endangered and threatened sea turtles in scallop dredge gear and to conserve sea turtles listed under the Endangered Species Act. Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with this gear modification requirement and all other applicable requirements

was exempted on the Endangered Species Act's prohibition against takes.

76. Endangered and Threatened Species; Designation of Critical Habitat for Southern Resident Killer Whale. RIN 0648–AU38 (71 FR 69054, November 29, 2006). NMFS issued a final rule designating critical habitat for the Southern Resident killer whale (*Orcinus orca*) distinct population segment. Under the Endangered Species Act, we are responsible for determining whether certain species, subspecies, or distinct population segments are threatened or endangered, and designating critical habitat for them. Three specific areas were designated, (1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which comprise approximately 2,560 square miles (6,630 sq km) of marine habitat. We considered the economic impacts and impacts to national security, and concluded the benefits of exclusion of 18 military sites, comprising approximately 112 square miles (291 sq km), outweighed the benefits of inclusion because of national security impacts. An economic analysis, biological report, and Endangered Species Act report were available for comment along with the proposed rule. The supporting documents were finalized in support of the final critical habitat designation.

Dated: June 14, 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.

[FR Doc. 2013–14759 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 119

Thursday, June 20, 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

Submission for OMB Review; Comment Request

June 14, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utility Service

Title: Seismic Safety of New Building Construction, 7 CFR 1792, Subpart C.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, 42 U.S.C. 7701 et seq,) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR Part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need and Use of the Information: Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the design of each applicable building stating that the seismic provisions to 7 CFR Part 1792, Subpart C will be used in the design of the building. RUS will use this information to: (1) Clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 192.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 144.

Rural Utilities Service

Title: 7 CFR 1778, Emergency and Imminent Community Water Assistance Grants.

Omb Control Number: 0572–0110.

Summary of Collection: The Rural Utilities Service (RUS) is authorized under Section 306A of the Consolidated Farm and rural Development Act, (7 U.S.C. 1926(a) to provide grants to rural areas and small communities to secure adequate quantities of safe water. There are two levels of grant limits—$500,000 and $150,000. Grants made under this program shall be made for 100 percent of the project's cost, can serve rural areas with population not in excess of 5,000, and household income should not exceed 100 percent of a State's non-metropolitan median household income. Grants under this program may be made to public bodies and private nonprofit corporations serving rural areas.

Need and Use of the Information: RUS will collect the information from applicants applying for grants under 7 CFR 1778. The information is unique to each borrower and emergency situation. Applicants must demonstrate that there is an imminent emergency or that a decline occurred within 2 years of the date the application was filed with Rural Development.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 400.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–14668 Filed 6–19–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–13–0019]

Plant Variety Protection Board; Open Teleconference Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice is intended to notify the public of their opportunity to attend an open meeting of the Plant Variety Protection Board.

DATES: July 31, 2013 2:00 p.m. to 4:00 p.m., open to the public.

ADDRESSES: The meeting will be held at the United States Department of Agriculture, Room 4530, South Building, 1400 Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Banks, Plant Variety Protection Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, 1400 Independence, Avenue SW., Washington, DC 20250. Telephone number (202) 260–8983, fax (202) 260–8976, or email: *jennifer.banks@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), this notice is given regarding an upcoming Plant Variety Protection (PVP) Board meeting. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Act; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the Act, ''Public Interest in Wide Usage'' (7 U.S.C. 2404).

The purpose of the meeting will be to introduce the topics of the PVP Office's 2013 achievements, ongoing process improvements, plans for electronic applications/database conversion, and concepts on using molecular techniques for PVP distinctness characterization. The proposed agenda for the PVP Board meeting will include a welcome by Department officials followed by a discussion focusing on program activities that encourage the development of new plant varieties and appeals to the Secretary. The agenda will also include presentations on the PVP Process Improvement, electronic PVP application/computer database development, and the use of molecular markers for PVP applications.

The meeting will be open to the public. Those wishing to attend or phone into the meeting are encouraged to pre-register by July 24, 2013 with the person listed under **FOR FURTHER INFORMATION CONTACT**. If you require accommodations, such as sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Minutes of the meeting will be available for public review 30 days following the meeting at the address listed under **FOR FURTHER INFORMATION CONTACT**. The minutes will also be posted on the Internet Web site *http://www.ams.usda.gov/PVPO*.

Dated: June 14, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–14713 Filed 6–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–13–0035; FV13–996–1]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for terms of office ending June 30, 2016. Selected nominees would replace three producer and three industry representatives who currently serve on the Board and have terms of office that end June 30, 2013. Also, one individual would fill a currently vacant industry position for a term of office ending June 30, 2015. The Board consists of 18 members representing producers and the industry. USDA values diversity. In an effort to obtain diversity among candidates, USDA encourages the nomination of men and women of all racial and ethnic groups and persons with a disability.

DATES: Written nominations must be received on or before July 22, 2013.

ADDRESSES: Nominations should be sent to Jennie M. Varela, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884: Telephone: (863) 324–3375; Fax: (863) 325–8793; Email: *Jennie.Varela@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Section 1308 of the 2002 Farm Bill requires the Secretary of Agriculture to establish and consult with the Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States.

The 2002 Farm Bill provides that the Board's makeup will include three producers and three peanut industry representatives from States specified in each of the following producing regions: Southeast (Alabama, Georgia, and Florida); Southwest (Texas, Oklahoma, and New Mexico); and Virginia/Carolina (Virginia and North Carolina).

The term ''peanut industry representatives'' includes, but is not limited to, representatives of shellers, manufacturers, buying points, and marketing associations and marketing cooperatives. The 2002 Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act.

USDA invites individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill two positions in the Southeast region; three positions in the Southwest region, one of which is currently vacant; and two positions in the Virginia/North Carolina region.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Jennie Varela at the address provided in the ''Addresses'' section above. Copies of this form may be obtained at the Internet site *www.ams.usda.gov/*

PeanutStandardsBoard, or from Jennie Varela. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: June 14, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–14714 Filed 6–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0026]

Pioneer Hi-Bred International, Inc.; Determination of Nonregulated Status of Maize Genetically Engineered for Herbicide and Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a maize line developed by Pioneer Hi-Bred International Inc., designated as maize event DP–ØØ4114–3, which has been genetically engineered to be resistant to certain lepidopteran and coleopteran pests and to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Pioneer Hi-Bred International, Inc., in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* June 20, 2013.

ADDRESSES: Supporting documents, comments we received on our previous notice announcing our preliminary determination, and our responses to those comments may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0026* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. Supporting documents are also available on the APHIS Web site at *http://www.aphis.usda.gov/biotechnology/petitions/_table_pending.shtml* under APHIS petition Number 11–244–01p.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Stankiewicz Gabel, Chief, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3927, email: *rebecca.l.stankiewicz-gabel@aphis.usda.gov*. To obtain copies of the documents referred to in this notice, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 11–244–01p) from Pioneer Hi-Bred International, Inc., (Pioneer) of Johnston, IA, seeking a determination of nonregulated status for maize (*Zea mays*) designated as maize event DP–ØØ4114–3 (event 4114), which has been genetically engineered to be resistant to certain lepidopteran pests, including European corn borer (*Ostrinia nubilalis*), and certain coleopteran pests, including western corn rootworm (*Diabrotica virgifera virgifera*), as well as to the herbicide glufosinate. The petition stated that this maize is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on February 27, 2013 (78 FR 13312–13313, Docket No. APHIS–2012–0026), APHIS announced the availability of the Pioneer petition, a plant pest risk assessment (PPRA), and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject maize is likely to pose a plant pest risk, the draft EA, and the PPRA for 60 days ending on April 29, 2013.

APHIS received 12 comments during the comment period: Several of these comments included electronic attachments consisting of a consolidated document of identical letters for a total of 573 comments. Issues raised during the comment period include potential effects on human and animal health and non-target organisms, herbicide resistance, corn rootworm resistance, effects of stacked genes, and the length of the comment period. APHIS has addressed the issues raised during the comment period and has provided responses to comments as an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status of Pioneer's maize event 4114, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent

[1] To view the notice, petition, draft EA, the PPRA, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0026*.

scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Pioneer, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Pioneer's maize event 4114 is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, PPRA, EA, finding of no significant impact, and response to comments, are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 14th day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–14705 Filed 6–19–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0014]

Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Food

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA) are sponsoring a public meeting on August 5, 2013. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 21st Session of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) of the Codex Alimentarius Commission (Codex), which will be held in Minneapolis, Minnesota from August 26–30, 2013. The Under Secretary for Food Safety and the Food and Drug Administration recognize the importance of providing interested parties the opportunity to obtain background information on the 21st Session of CCRVDF, and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, August 5, 2013 from 1:00–4:00 p.m.

ADDRESSES: The public meeting will be held at the Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Ave. Room 107–A, Washington, DC 20250. Documents related to the 21st Session of CCRVDF will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Kevin Greenlees, U.S. Delegate to the 21st Session of the CCRVDF, invites U.S. interested parties to submit their comments electronically to the following email address: *Kevin.Greenlees@fda.hhs.gov.*

Call-In Number: If you wish to participate in the public meeting for the 21st Session of the CCRVDF by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1–888–858–2144.

Participant code: 6208658.

FOR FURTHER INFORMATION ABOUT THE 21ST SESSION OF THE CCRVDF CONTACT: Kevin Greenlees, Senior Advisor for Science and Policy, Office of New Animal Drug Evaluation, HFV–100, Food and Drug Administration, Center for Veterinary Medicine, 7520 Standish Place, Rockville, MD 20855, Telephone: (240) 276–8214, Fax: (240) 276–9538, Email: *Kevin.Greenlees@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Kenneth Lowery, U.S. Codex Office, 1400 Independence Ave. SW., Room 4861, Washington, DC 20250, Telephone: (202) 690–4042, Fax: (202) 720–3157, Email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCRVDF is responsible for determining priorities for the consideration of residues of veterinary drugs in foods, recommending maximum levels of such substances; developing codes of practice as may be required, and considering methods of sampling and analysis for the determination of veterinary drug residues in foods.

The Committee is hosted by the United States of America.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 21st Session of the CCRVDF will be discussed during the public meeting:

- Matters referred by the Codex Alimentarius Commission and other Codex Committees and Task Forces
- Matters arising from FAO/WHO and from the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Report on World Organization for Animal Health (OIE) activities, including the harmonization of technical requirements for registration of veterinary medicinal products (VICH)
- Draft Maximum Residue Limits (MRLs) for veterinary drugs (at Step 6)
- Proposed draft MRLs for veterinary drugs (at Step 4)
- Risk Management Recommendations for Residues of Veterinary Drugs for which no ADI and/or MRLs has been recommended by JECFA due to Specific Human Health Concerns
- Proposed draft guidelines on performance characteristics for multi-residue methods
- Risk Analysis Policy on Extrapolation of MRLs of Veterinary Drugs to Additional Species and Tissues
- Proposed ''concern form'' for the CCRVDF (format and policy procedure for its use)
- Draft priority list of veterinary drugs requiring evaluation or re-evaluation by JECFA
- Database on countries' needs for MRLs
- Discussion paper on Guidelines on the Establishment of MRLs or other Limits in Honey
- Other business and future work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the August 5, 2013 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to

pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 21st session of the CCRVDF, Kevin Greenlees (see **ADDRESSES**). Written comments should state that they relate to activities of the 21st session of the CCRVDF.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on: June 14, 2013.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2013–14659 Filed 6–19–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2013]

Foreign-Trade Zone 28—New Bedford, Massachusetts, Application for Subzone, Talbots Import, LLC, Lakeville, Massachusetts

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of New Bedford, grantee of FTZ 28, requesting special-purpose subzone status for the facility of Talbots Import, LLC (Talbots), located in Lakeville, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on June 13, 2013.

The proposed subzone (116 acres) is located at 175–190 Kenneth W. Welch Drive, Lakeville, Massachusetts. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 30, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 14, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* (202) 482–1346.

Dated: June 13, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–14775 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2013]

Authorization of Production Activity; Subzone 196A; TTI, Inc. (Electromechanical and Circuit Protection Devices Production/Kitting); Fort Worth, Texas

On February 13, 2013, TTI, Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 196A, in Fort Worth, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 15683, 03–12–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: June 13, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–14774 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–988]

Silica Bricks and Shapes From the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that silica bricks and shapes from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. We intend to issue

the final determination within 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective Date:* June 20, 2013.

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Jonathan Hill, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3627 and (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The products covered by the scope of this investigation are refractory bricks and shapes, regardless of size, that contain at least 90 percent silica (SiO_2) where at least 50 percent of the silica content, by weight, is crystalline silica, regardless of other materials contained in the bricks and shapes. Refractory refers to nonmetallic materials having those chemical and physical properties that make them applicable for structures, or as components of systems, that are exposed to environments above 1000 degrees Fahrenheit (538 degrees Celsius). The products covered by the scope of this investigation are currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 6902.20.1020 and 6902.20.5020. Because the definition of ''refractory'' in the HTSUS differs from that in the scope of this investigation, products covered by the scope of this investigation may also enter under HTSUS number 6909.19.5095. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

The scope of this investigation does not cover refractory bricks and shapes, regardless of size, that are made, in part, from non-crystalline silica (commonly referred to as fused silica) where the silica content is less than 50 percent, by weight, crystalline silica.

Methodology

The Department has conducted this antidumping duty investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. Specifically, unless specified otherwise, the factors of production (''FOPs'') for the respondent, Tianjin New Century Refractories Co., Ltd.; Tianjin New World Import & Export Trading Co., Ltd.; and XinYi American Advanced Material Co., Ltd. (collectively, ''New Century Group'') have been valued using data from the primary surrogate country, Ukraine, a country comparable economically to the PRC and a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, *see* ''Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation of Silica Bricks and Shapes from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (''Preliminary Decision Memorandum'') and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration'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 Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[1] This practice is described in Policy Bulletin 05.1.[2]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Producer	Weighted-average dumping margin (percent)
Tianjin New Century Refractories Co., Ltd.; Tianjin New World Import & Export Trading Co., Ltd.; and XinYi American Advanced Material Co., Ltd.	Dengfeng Yuzhong Refractories Co. Ltd ...	84.89
PRC-wide Entity *		91.16

* The PRC-wide entity includes Shandong Daqiao Co., Ltd.

Disclosure and Public Comment

The Department intends to disclose calculations performed for this preliminary determination to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration via IA ACCESS no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, must be submitted via IA ACCESS no later than five days after the deadline for case briefs.[3] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

Interested parties, who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed

[1] *See Silica Bricks and Shapes from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 77 FR 73982, 73986 (December 12, 2012) (''*Initiation Notice*'').

[2] *See* Import Administration's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

[3] *See* 19 CFR 351.309.

electronically using IA ACCESS. An electronically filed hearing request must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[4] Hearing requests should contain the party's name, address, and telephone number, the number of participants in the hearing, and a list of the issues to be discussed at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing, two days before the scheduled date.

For the final determination in this investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the publication of this preliminary determination.[5] In accordance with 19 CFR 351.301(c)(1) (2008), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) (2008) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1) (2008).[6] Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of the information that is already on the record of the ongoing proceeding that the factual information intends to rebut, clarify, or correct.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of silica bricks and shapes from the PRC, as described in the ''Scope of the Investigation'' section, entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.**

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[7] equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be equal to the weighted-average dumping margin listed for that combination in the table; (2) for all other combinations of PRC exporters/producers of the merchandise under consideration, the cash deposit rate will be equal to the weighted-average dumping margin listed in the table above for the PRC-wide entity; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These cash deposit instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of silica bricks and shapes, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Postponement of Final Determination and Extension of Provisional Measures

On June 4, 2013, New Century Group requested, pursuant to section 735(a)(2)(a) of the Act and 19 CFR 351.210(b)(2)(ii), that the Department postpone its final determination to 135 days after publication of the preliminary determination.[8] Additionally, New Century Group requested, pursuant to 19 CFR 351.210(e)(2) and section 733(d) of the Act, that the Department extend the application of the provisional measures from a four-month period to a six-month period. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), the Department is granting these requests to postpone the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because (1) The preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the merchandise under consideration, and (3) there are no compelling reasons to deny these requests. The Department is further extending the application of the provisional measures from a four-month period to a six-month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: June 13, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope Comments
2. Respondent Selection
3. Discussion of the Methodology
   a. Non-Market Economy Country
   b. Surrogate Country
   c. Single Entity Treatment
   d. Separate Rates
   e. Application of Facts Available and Adverse Inferences
   f. Date of Sale
   g. Fair Value Comparisons
   h. Factor Valuation Methodology
   i. Currency Conversion
4. Verification

[FR Doc. 2013–14767 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 26, 2013, the Department of Commerce (the Department) initiated the antidumping duty new shipper review of freshwater crawfish tail meat from the People's Republic of China (PRC) with respect to Hubei Nature Agriculture Industry Co., Ltd. (Hubei Nature). The period of

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.301(c)(3)(i) (2008).

[6] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[7] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[8] *See* Letter from New Century Group to Dr. Rebecca Blank, Acting Secretary of Commerce regarding, ''Silica Bricks and Shapes from the People's Republic of China: Request for Postponement of Final,'' dated June 4, 2013.

review (POR) of September 1, 2012, through February 28, 2013. For the reasons stated below, we are rescinding the review of Hubei Nature.

DATES: *Effective Date:* June 20, 2013.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2013, the Department initiated an antidumping duty new shipper review of freshwater crawfish tail meat from the PRC, for the period September 1, 2012, through February 28, 2013, with respect to Hubei Nature.[1] On May 9, 2013, the Department issued a letter to Hubei Nature requesting documentation establishing the date of entry applicable to the U.S. sale and shipment of freshwater crawfish tail meat which formed the basis for the initiation of this new shipper review. On May 14, 2013, Hubei Nature provided the requested information.

Rescission of Review

Under 19 CFR 351.214(f)(2) of the Department's regulations, when the sale of the subject merchandise occurs within the POR, but the entry occurs after the POR, the Department may expand the POR unless the expansion would likely prevent the completion of the review within the time limits set by the Department's regulations. While the regulations do not provide a definitive date by which the entry must occur, the preamble to the Department's regulations and 19 CFR 351.214(f)(2)(i) state that both the entry and the sale should occur during the POR, with the language in the preamble clarifying further that only under ''appropriate'' circumstances should the POR be extended when the entry is made after the POR.[2]

While the Department did not adopt in the regulations a precise cut-off point for expanding the POR to cover post-POR entries, 19 CFR 351.214(f)(2) and the preamble to the Department's regulations leave the Department the discretion to determine whether to expand the POR, and, if so, the length of such expansion.[3] In the majority of prior cases, the Department extended the POR no more than approximately 30 days in order to capture entries of POR sales.[4] The entry in this case was made long after the end of the POR.[5]

In this case, pursuant to 19 CFR 351.214(f)(2), we find that an expansion of the normal POR to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would likely prevent the completion of the review of Hubei Nature within the time limits set by the Department's regulations. The Department would be required to gather additional information for the expanded period, analyze the information obtained, and, if necessary, verify the additional information. For example, the Department would be required to seek all necessary information from Hubei Nature and its importer(s) in connection with the sales and sales-related expenses, as well as obtain the factors of production data, applicable to a number of months outside the POR.[6] Accordingly, we are rescinding the new shipper review with respect to Hubei Nature for the period September 1, 2012, through February 28, 2013.

The deadline for requesting a new shipper review covering Hubei's entry has not passed. *See* 19 CFR 351.214(c). The Department will consider a timely and adequate request for new shipper review from Hubei Nature made during the six-month period ending with the end of the annual anniversary month of this order, pursuant to 19 CFR 351.214(d) of the Department's regulations. Therefore, if Hubei Nature continues to meet the criteria for requesting a new shipper review, the Department will consider initiating a new shipper review with the POR that includes the sale which is the subject of this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: June 14, 2013.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–14769 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 78 FR 24723 (April 26, 2013).

[2] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319 (May 19, 1997) (''*Final Rule*'').

[3] *See Final Rule,* 62 FR at 27319–20 (''The Department does not disagree with the notion that the Secretary should have the discretion to expand the review period in appropriate cases.'').

[4] *See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review,* 76 FR 6399 (February 4, 2011) (extending the POR by 31 days where the first shipment entered one day after the end of the POR); *Fresh Garlic From the People's Republic of China: Initiation of New Shipper Reviews,* 75 FR 38986 (July 7, 2010) (extending the POR by one month for a shipment that entered less than one month after the end of the POR); *Uncovered Innerspring Units From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 75 FR 62107 (October 7, 2010) (extending the POR by four days); *Certain Forged Stainless Steel Flanges From India: Rescission of New Shipper Review,* 66 FR 58433 (November 21, 2001) (rescinding a new shipper review where the entry was made more than three months after the end of the POR); *Petroleum Wax Candles from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty New Shipper Review of Shandong Huihe, Ltd.,* 69 FR 46512 (August 3, 2004) (extending the POR by less than one month ''[b]ecause we determine that this short expansion of the period will not likely prevent the completion of the review within the prescribed time limits, we have expanded the annual review period'').

[5] Due to the business proprietary nature of information regarding the entry date in question, we are withholding this information. *See* Hubei Nature's letter, dated March 14, 2013.

[6] The Department issued the antidumping duty new shipper questionnaire to Hubei Nature on May 1, 2013.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before July 10, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 13–017. Applicant: Ohio State University, 2041 College Road, Columbus, OH 43210. Instrument: Cryo-SEM System with Aquilo Preparation Chamber. Manufacturer:

Quorum Technologies, United Kingdom. Intended Use: The instrument will be fitted to an existing dual beam focused ion beam (FIB) instrument in order to provide a new capability for 3–D imaging and analysis of polymeric materials and biomaterials at cryogenic temperatures below −109 degrees Celsius. The required performance characteristics for this instrument are a highly stable, thermally isolated nitrogen gas-cooled stage which attaches to the SEM stage and is capable of reaching a temperature range of +100 to −190 degrees Celsius, a separately cooled cold trap with independent temperature control capable of reaching temperatures below −190 degrees Celsius, a cryo-preparation, cryo-transfer chamber that is directly attached to the SEM, but with the turbomolecular vacuum pumping and advanced gas cooling system mounted remotely, as well as a high vacuum system consisting of a remotely positioned 70L/s turbomolecular pumping system capable of achieving a vacuum of 10^{-6} mbar or better in the directly attached cryopreparation, cryo-transfer chamber. The instrument will be used for cryo-imaging that will provide new insights in the study of biocompatibility and failure of orthopaedic implants, and also the evaluation of new materials and implant surfaces for tissue engineering applications. The cryo-preparation, cryo-transfer and cryo-imaging capabilities will enable minimally invasive approaches to be used to investigate structures and interfaces in their near-native vitreous state. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 3, 2013.

Docket Number: 13–019. Applicant: California State University Northridge, 18111 Nordhoff Street, Northridge, CA 91330. Instrument: Ultrahigh Vacuum Low Temperature Scanning Tunneling Microscope. Manufacturer: Unisoku Co., Ltd., Japan. Intended Use: The instrument will be used to study the electronic and spin-related phenomena (Kondo effect, spin flip, spin injection, etc.) in low dimensional materials including grapheme (one atomic layer of carbon atoms), magnetic materials (transition metals iron, cobalt, nickel and corresponding phthalocyanine molecules), and topological insulators. The techniques to be implemented include depositing magnetic atoms or molecules on grapheme and measuring scanning tunneling spectroscopy of these magnetic impurities on grapheme, growing grapheme on ferromagnetic materials (cobalt, iron) and measuring the spin-polarization of grapheme induced by the ferromagnetic materials, as well measuring the scanning tunneling spectroscopy on topological insulators. The capabilities required for these experiments that this instrument fulfills include a high magnetic field of 8 Tesla, and measurements at low temperature (<5 Kelvin). Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 1, 2013.

Docket Number: 13–021. Applicant: University of Massachusetts Amherst, 120 Governors Drive, Amherst, MA 01003. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to identify structure/properties relationships of polymer based solar cells or for the structural analysis of polymer/nanoparticle hybrid materials for the development of high-density storage devices, as well as to study the self-assembly of bio-polymer systems for drug-delivery system development. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 3, 2013.

Docket Number: 13–020. Applicant: University of Texas at Austin, 2109 San Jacinto Blvd.—D3700, Austin, TX 78712–1415. Instrument: V-Gait Dual Belt Instrumented Treadmill. Manufacturer: Motek Medial, the Netherlands. Intended Use: The instrument will be used to study how both healthy humans and humans with various walking impairments (old age, stroke, etc.) maintain balance and prevent falls while they walk, and how to develop rehabilitation interventions that can help reduce risks of falling in these individuals. The experiments will include asking participants to walk on the treadmill while they are subjected to a variety of different types of perturbations and manipulations. The instrument's software will control and coordinate both the treadmill and the virtual reality environment to impose the perturbations and/or other walking conditions that are specified. Existing devices will be integrated into the instrument's virtual reality system to synchronously record information regarding how participants move and their muscle activations in response to various manipulations of their walking behavior. The primary individual components of this instrument that are required for these experiments are the split-belt perturbation treadmill, the virtual reality system, and the data recording systems, as well as the ''D-Flow'' system which allows each component to communicate with one another. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 1, 2013.

Docket Number: 13–023. Applicant: Max Planck Florida Institute, One Max Planck Way, Jupiter, FL 33458. Instrument: Quanta 250 FEG SEM (D8421). Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used for the fabrication of atomic force microscope cantilevers and electron beam deposition. The cantilevers are made from silicon or silicon nitride, with the radius of the tip curvature on the order of nanometers. Electron-beam deposition is a process of decomposing gaseous molecules by electron beam leading to deposition of non-volatile fragments onto a nearby substrate. The electron beam is usually provided by a scanning electron microscope that results in high spatial accuracy (less than one nanometer), and the possibility to produce free-standing, three-dimensional structures. The cantilevers are observed by the scanning electron microscope. The chamber of the scanning electron microscope is filled with carbon gases. Then the electron from the scanning microscope focuses on the tip of cantilevers to deposit an amorphous carbon. The instrument needs to work with high beam parking precision (~1 nanometer) in the environment in which the material deposition is produced in relatively low vacuum. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 16, 2013.

Dated: June 14, 2013.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2013–14773 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC549

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Puerto Rico's Department of Natural and Environmental Resources (PR DNER). If granted, the EFP would authorize the PR DNER to harvest reef fish by hook-and-line gear at 10 stations off the west coast and 1 station off the east coast of Puerto Rico in Federal waters. All reef fish caught during the duration of the EFP, including undersized and seasonally prohibited reef fish species, would be retained, except for goliath grouper, Nassau grouper, and any parrotfish species. The purpose of the exempted fishing activities is to obtain additional life history information for the Caribbean Fishery Management Council (Council) and NMFS to use when making future management decisions for Caribbean reef fish.

DATES: Comments must be received no later than July 22, 2013.

ADDRESSES: You may submit comments on the application, identified by RIN 0648–XC549, by any of the following methods:

- *Email: Britni.Tokotch@noaa.gov.* Include in the subject line of the email comment the following document identifier: ''PR DNER_EFP 2013''.
- *Mail:* Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, 727–824–5305; email: *Britni.Tokotch@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The proposed collection for scientific research involves activities that would otherwise be prohibited by regulations at 50 CFR part 622, as they pertain to Caribbean reef fish managed by the Council and NMFS. The EFP would exempt this research activity from Federal regulations at § 622.435(a) (Seasonal and area closures), § 622.436 (Size limits), and § 622.437 (Bag limits).

This action involves activities covered by regulations implementing the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). Specimens would be collected in Federal waters off the west and east coasts of Puerto Rico aboard research vessels owned by the PR DNER and operated by two commercial fishermen under contract with PR DNER. Each research vessel's home port is located in Puerto Rico. Samples would be collected from the issuance of the EFP through December 31, 2015.

The purpose of the exempted fishing activities is to determine the spatial and temporal variations in stock abundance of Caribbean reef fish resources off Puerto Rico. Currently, fisheries-dependent data in the Caribbean are limited; therefore, additional fisheries-independent data are needed to more accurately describe the status of the Caribbean reef fish fishery. Additional life history information would be provided to the Council and NMFS to use when making future management decisions for Caribbean reef fish. Samples would be collected from the issuance of the EFP through December 31, 2015.

The study would consist of harvesting reef fish at 10 stations off the west coast and 1 station off the east coast of Puerto Rico in Federal waters. The majority of sampling would occur in depths to 50 fathoms. During sampling trips, the survey vessels would be drifting and would not be required to anchor. All reef fish caught during the duration of the EFP, including undersized and seasonally prohibited species, would be retained except goliath grouper, Nassau grouper, and any parrotfish species.

The EFP would allow the following estimated number of reef fish to be harvested from Puerto Rico's Federal waters: Vermilion snapper (in Snapper Unit 1)—40 lb, (18 kg), round weight; gray, lane, mutton, dog, and schoolmaster snappers (in Snapper Unit 3)—8,030 lb (3,642 kg), round weight; yellowtail snapper (in Snapper Unit 4)—480 lb (218 kg), round weight; red hind, coney, and graysby (in Grouper Unit 3)—240 lb (109 kg), round weight; yellowfin, red, tiger, and black groupers (in Grouper Unit 4)—100 lb (45 kg), round weight.

The sampling area would be divided into quadrats measuring two square nautical miles. Each quadrat would be sampled twice during the period of the EFP. Sampling station and date of sample would be randomly selected and may also vary according to weather and sampling logistics. Within each sampling quadrat, fishing would be conducted using hook-and-line gear with fish hooks #06, sinker units (weights), and squid as bait. Three lines would be used for sampling, with each line having three hooks. The quadrats would be sampled for up to 4 hours during each trip with each fishing line having a soak time of approximately 10 to 15 minutes. For each trip, the following data would be recorded: Date; time of vessel departure and arrival at dock; quadrat code (latitude and longitude); fishing time (soak time) for hook-and-line gear to the nearest 15 minutes; weather conditions; water depth; total number of fish caught per vessel; identification, number, weight, length, and reproductive condition of fish; and substrate type (when possible). After sampling is complete, the fish collected would be donated to the Puerto Rico Zoo to be used as animal feed.

NMFS finds this application warrants further consideration. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas or marine sanctuaries, without additional authorization. A report on the research would be due at the end of the collection period, to be submitted to NMFS and reviewed by the Council.

A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with appropriate fishery management agencies of the affected states, the Council, and the U.S. Coast Guard, as well as a determination that it is consistent with all applicable laws.

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

Dated: June 17, 2013.

Kelly Denit,

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

[FR Doc. 2013–14750 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC723

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the Northeast Fisheries Science Center contains all of the required information and warrants further consideration. The EFP would allow participants of an Electronic Monitoring (EM) Study to retain all catch brought on board, including sub-legal groundfish, prohibited species (with some exceptions), and fish that would otherwise be discarded. All catch would be sampled at the dock by a dockside monitor.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on EFP applications.

DATES: Comments must be received on or before July 5, 2013.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nero.efp@noaa.gov.* Include in the subject line ''Comments on NEFSC Electronic Monitoring EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NEFSC Electronic Monitoring EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fisheries Management Specialist, 978–282–8493, *Liz.Sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NMFS Northeast Fisheries Science Center (NEFSC) submitted a complete application for an EFP on June 4, 2013, to enable data collection activities that the regulations on commercial fishing would otherwise restrict. The EFP would exempt three federally permitted commercial fishing vessels from fishing regulations while participating in the EM study and operating under projects managed by the NEFSC. The EFP would exempt participating vessels from the following fish possession regulations: Minimum fish size restrictions; fish possession limits; prohibited fish species (unless otherwise noted), not including species protected under the Endangered Species Act (ESA); and gear-specific fish possession restrictions.

The Fishery Sampling Branch (FSB) of the NEFSC is conducting a multi-year study in conjunction with Archipelago Marine Research, Ltd., to investigate the use of EM technology as a monitoring tool in the Northeast multispecies fishery. The technology would be tested on three volunteer vessels in the trawl, longline, and gillnet fisheries, representing a range of vessel sizes, to effectively assess the applicability of the technology in sector-based management. EM technology uses a combination of passive electronic systems, such as video cameras, motion sensors, locator devices, and computers to detect fishing events and capture catch handling practices. In this mock full-retention program, the catch would be retained and EM technology would be used to monitor and document discard compliance. Any incidentally caught marine mammal; seabird; sea turtle; ESA-listed fish; large pelagic fish; American lobster; thorny, barndoor, or smooth skate; wolffish; or Atlantic halibut would be discarded at sea per normal fishing requirements at designated control points on the vessels, in full view of a monitoring camera. Vessel captains would have the discretion to discard at sea large portions of select catch (dogfish and skates) due to safety concerns; these discard events would be documented.

These exemptions would only apply to declared multispecies trips that are conducted in coordination with FSB and would include a dockside monitor intercept. The three vessels involved in the EM Study participate in sectors. All catch of stocks allocated to sectors by vessels would be deducted from the sector's Annual Catch Entitlement (ACE) for each Northeast multispecies stock. Once a sector's ACE for a stock has been reached, vessels would no longer be allowed to fish in that stock area, unless they acquired additional ACE for the limiting stock.

Dockside monitoring is a necessary component to this monitoring approach to verify catch and Vessel Trip Reporting (VTR) data. Dockside sampling would include collecting weights for fish that would be discarded during a normal fishing trip. Marketable fish would be accounted for by the dealer and VTR data. Non-marketable catch, including sub-legal sized groundfish, prohibited species, fish for which the vessel does not have a permit to sell, and fish below market quality would be identified, weighed, and sampled by FSB staff. FSB staff would retain any non-marketable catch, which could be used for training for observers, donation to food shelters, and donation to local fishermen for bait.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: June 17, 2013.

Kelly Denit,

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

[FR Doc. 2013–14756 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC564

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort Sea, Alaska

Correction

In notice document 2013–14188 appearing on pages 35851–35874 in the issue of Friday, June 14, 2013, make the following correction:

On page 35851, in the first column, in the second line of the **DATES** paragraph, ''July 15, 2013'' should read ''July 11, 2013''.

[FR Doc. C1–2013–14188 Filed 6–19–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–C–2013–0036]

Request of the United States Patent and Trademark Office for Public Comments: Voluntary Best Practices Study

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; request for public comments.

SUMMARY: Today, the Intellectual Property Enforcement Coordinator (IPEC) released the Administration's *Joint Strategic Plan for Intellectual Property Enforcement.* The Strategy notes that the Administration encourages the private sector to help reduce intellectual property infringement that occurs online—such as copyright piracy and trademark counterfeiting—by developing and implementing cooperative, voluntary initiatives that are practical, effective and consistent with due process, free speech, privacy of users and competition. The Administration encourages all participants in such voluntary initiatives to continue cooperating with all interested stakeholders to ensure that the initiatives are as effective and transparent as possible. (The 2013 Joint Strategic Plan for Intellectual Property Enforcement is available at *http://www.whitehouse.gov/omb/intellectualproperty/ipec.*)

Consistent with the Administration's policy of building a data-driven government, the Strategy stresses the importance of evaluating the effectiveness of the voluntary initiatives encouraged by the Administration. The Strategy also notes that the United States Patent and Trademark Office (USPTO) will solicit input from the public and from other parts of the U.S. Government to assist in the evaluation of whether such voluntary initiatives help to reduce infringement.

DATES: To be ensured of consideration, written comments must be received on or before July 22, 2013.

ADDRESSES: Written comments should be submitted electronically via *http://www.regulations.gov,* docket number PTO–2013–0036. Submissions should contain the term ''Voluntary Best Practices Study.'' The regulations.gov Web site is a Federal E-Government Web site that allows the public to find, review and submit comments on documents that have published in the **Federal Register** and that are open for comment. Submissions filed via the regulations.gov Web site will be available to the public for review and inspection. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary business information.

If you are unable to provide submissions to regulations.gov, you may contact the Office of Chief Economist at *saurabh.vishnubhakat@uspto.gov* using the subject line ''Voluntary Best Practices Study'' or (571) 272–6900 to arrange for an alternate method of transmission.

FOR FURTHER INFORMATION CONTACT: Saurabh Vishnubhakat, Office of Chief Economist at *saurabh.vishnubhakat@uspto.gov,* or (571) 272–6900.

SUPPLEMENTARY INFORMATION: The USPTO invites input from all interested parties on the processes, data metrics, and methodologies that could be used to assess the effectiveness of cooperative agreements and other voluntary initiatives to reduce infringement. The USPTO additionally welcomes input on the following questions:

1. How should ''effectiveness'' of cooperative voluntary initiatives be defined?

2. What type of data would be particularly useful for measuring effectiveness of voluntary initiatives aimed at reducing infringement and what would that data show?

3. If the data is not readily available, in what ways could it be obtained?

4. Are there particular impediments to measuring effectiveness, at this time or in general, and if so, what are they?

5. What mechanisms should be employed to assist in measuring the effectiveness of voluntary initiatives?

6. Is there existing data regarding efficacy of particular practices, processes or methodologies for voluntary initiatives, and if so, what is it and what does it show?

Dated: June 14, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–14702 Filed 6–19–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Jinga-hi, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Jinga-hi, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned invention described in U.S. Patent No. 8049486: Coupled electric field sensors for DC target electric field detection.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 5, 2013.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, email: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: June 13, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–14692 Filed 6–19–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13239–002]

Parker Knoll Hydro, LLC; Notice of Environmental Site Review

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 13239.

c. *Date filed:* November 30, 2011.

d. *Applicant:* Parker Knoll Hydro, LLC.

e. *Name of Project:* Parker Knoll Pumped Storage Hydroelectric Project.

f. *Location:* At Parker Mountain, near the Town of Richfield, Piute County, Utah. The project would occupy 458.7 acres of federal land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Justin Barker, Parker Knoll Hydro, LLC., 975 South State Highway, Logan, UT 84321; (435) 752–2580.

i. *FERC Contact:* Matt Buhyoff, *matt.buhyoff@ferc.gov,* (202) 502–6824.

j. This application is not ready for environmental analysis at this time.

k. The proposed project would be a closed-loop pumped storage system, with an initial fill from the existing Otter Creek reservoir. Parker Knoll would include the following new facilities: (1) An approximately 175-feet-high upper main dam with a crest length of approximately 1,650 feet and one saddle dam; (2) an upper reservoir with a storage capacity of approximately 6,780 acre-feet and a surface area of approximately 110 acres; (3) an approximately 100-feet-high lower dam with a crest length of approximately 1,750 feet and two saddle dams; (4) a lower reservoir with storage capacity of approximately 6,760 acre-feet and a surface area of approximately 130 acres; (5) a 2,390-feet-long and 27-feet-diameter headrace tunnel; (6) a 2,200-feet-long and 27-feet-diameter vertical shaft; (7) a 1,000-feet-long and 27-feet-diameter steel-lined penstock tunnel; (8) a 7,126-feet-long and 35-feet-diameter tailrace tunnel; (9) a powerhouse containing four variable speed, reversible pump-turbine units with a minimum rating of 250 megawatt (MW); (10) an approximately 585-feet by 340-feet substation; (11) a 16-inch diameter and 68,000-feet-long fill pipeline and system; (12) approximately one mile of 345-kV transmission line; and (13) appurtenant facilities. The project would occupy 458.7 acres of federal land and would have an estimated annual generation of 2,630 gigawatt hours.

l. A copy of the application 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. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Environmental Site Review

The Applicant and FERC staff will conduct a project Environmental Site Review beginning at 8:00 a.m. on July 16, 2013. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Richfield City Offices, located at 255 S 100 E in Richfield, Utah. All participants are responsible for their own transportation to the site. Four-wheel drive vehicles are recommended. Anyone with questions about the Environmental Site Review should contact Mr. Justin Barker of Parker Knoll Hydro, LLC. at 435–752–2580.

Dated: June 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14735 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–313]

Union Electric Company (Ameren Missouri); Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Conforming Structures Report.

b. *Project No:* 459–313.

c. *Date Filed:* June 5, 2013, as supplemented June 12, 2013.

d. *Applicant:* Union Electric Company (Ameren Missouri).

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The Osage Hydroelectric Project is located on the Osage River in Benton, Camden, Miller, and Morgan counties, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren Missouri, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Shana High at (202) 502–8674, or email: *shana.high@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* July 15, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–459–313) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by the November 10, 2011 Order on Rehearing and Amending Shoreline Management Plan, ordering paragraph (E)(2), Ameren filed its comprehensive report describing encroachments (privately-built non-conforming structures) within the revised project boundary. These encroachments are accessory structures built after March 28, 2008, such as decks, walkways, gazebos, patios, and boathouses, and do not include residential structures. The report does not include structures built where owners had the right to construct them, or those that have been previously permitted by Ameren or its predecessors. The report only addresses unpermitted structures built without authorization from Ameren and without an appropriate property right. Ameren's report indicates that none of the encroachments interfere with project purposes, and therefore no structures will need to be removed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room

2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Ameren's shoreline office. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14732 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2195–088]

Portland General Electric Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity amendment of license to install minimum flow turbine generating units.

b. *Project No.:* 2195–088.

c. *Date Filed:* April 10, 2013.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Clackamas River Hydroelectric Project.

f. *Location:* On the Oak Grove Fork of the Clackamas River and the mainstem of the Clackamas River in Clackamas County, Oregon. The project occupies federal lands within the Mt. Hood National Forest, under the jurisdiction of the U.S. Forest Service, and a reservation of the U.S. Department of Interior's Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Julie A. Keil, Director of Hydro Licensing and Water Rights, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8864.

i. *FERC Contact:* Mark Pawlowski, telephone: (202) 502–6052, or email address: *mark.pawlowski@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance date of this notice by the Commission.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail a copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2195–088) on any comments or motions filed.

k. *Description of Request:* Portland General Electric (licensee) proposes to construct, operate and maintain small turbine facilities at four locations: 1) a powerhouse at the base of Timothy Lake Dam housing two approximately 0.85-megawatt (MW) turbines, 2) a powerhouse at Crack-in-the-Ground located downstream of Lake Harriet housing a 1.0-MW turbine, 3) a powerhouse housing a 0.135-MW turbine utilizing return flows from the juvenile downstream migrant collection systems and the North Fork fishway adult fish trap, and 4) a turbine and an 0.850-MW turbine and induction generator utilizing North Fork fishway attraction flows. The total capacity of the 136.645-MW Clackamas River Hydroelectric Project would increase by approximately 3.8 MW.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e Filing'' link.

Dated: June 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14737 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–497–000]

Southern Union Company, d/b/a Missouri Gas Energy; Laclede Gas Company; Notice of Application

Take notice that on June 12, 2013, Southern Union Company, d/b/a Missouri Gas Energy (MGE Southern Union), 3420 Broadway, Kansas City, Missouri 64111, and Laclede Gas Company (Laclede), 720 Olive Street, St. Louis, Missouri 63101, jointly filed in Docket No. CP13–497–000 an application: (1) Requesting authorization for MGE Southern Union pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon by transfer to Laclede its limited jurisdiction certificate to transport gas on a no-fee exchange basis and (2) for Laclede pursuant to section 7(c) of the NGA to be issued a limited jurisdiction certificate for the purpose of transporting natural gas in the same manner as MGE Southern Union. In addition, Laclede requests: (1) a determination that the limited jurisdiction certificate will not affect the non-jurisdictional status of the remainder of its facilities and operations and (2) that the Commission waive the requirements of Part 154 of the Commission's Regulations for as long as no fee is charged by Laclede for the exchange.

Specifically, MGE Southern Union and Laclede are public utilities providing natural gas service in Missouri. Pursuant to its limited jurisdiction certificate issued on January 12, 1994, in Docket No. CP93–750–000, MGE Southern Union also provides transportation service on a no-fee exchange basis through its Missouri facilities to supply a few stranded retail customers of ONEOK, Inc. located in Kansas and Oklahoma. Southern Union Company and Laclede have entered into an agreement whereby Laclede will acquire the assets of MGE Southern Union utilized to provide such service to ONEOK's stranded customers. The requested authorizations will allow Laclede to continue such service in the same manner as MGE Southern Union. No construction of facilities is proposed. The applicants request that an order be issued by July 31, 2013 granting the requested authorizations.

Any questions regarding the joint application should be directed to: Gearold L. Knowles, Attorney for Missouri Gas Energy, Schiff Hardin LLP, 901 K Street NW., Suite 700, Washington, DC 20001, by phone at (202) 778–6400, or by email at *gknowles@schiffhardin.com;* or Mark C. Darrell, Senior Vice President, General Counsel and Chief Compliance Officer, The Laclede Group, Inc., 720 Olive Street, St. Louis, Missouri 63101, by email at *mdarrell@thelacledegroup.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This filing

is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: July 1, 2013.

Dated: June 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14730 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Southern Company Services, Inc. and the Midwest Independent Transmission System Operator, Inc.:

Midwest Independent Transmission System Operator, Inc. and the Southeastern Regional Transmission Planning (SERTP) Process Order No. 1000 Interregional Coordination Workshop

June 21, 2013, 10:00 a.m.–12:00 p.m., Local Time

The above-referenced meeting will be via web conference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER13–908, *Alabama Power Company et al.*
Docket No. ER13–913, *Ohio Valley Electric Corporation.*
Docket No. ER13–897, *Louisville Gas and Electric Company and Kentucky Utilities Company.*
Docket No. ER13–1221, *Mississippi Power Company.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. EL10–52, *Central Transmission, L.L.C. v. PJM Interconnection, L.L.C.*
Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*
Docket Nos. ER10–253 and EL10–14, *Primary Power, L.L.C.*
Docket Nos. ER11–2814 and ER11–2815, *PJM Interconnection, L.L.C. and American Transmission Systems, Inc.*
Docket No. EL12–69, *Primary Power LLC v. PJM Interconnection, L.L.C.*
Docket No. ER12–91, *PJM Interconnection, L.L.C.*
Docket No. ER12–92, *PJM Interconnection, L.L.C., et al.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER12–2399, *PJM Interconnection, L.L.C.*
Docket No. ER12–2708, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*
Docket No. ER13–195, *Indicated PJM Transmission Owners.*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*
Docket No. ER13–1033, *Linden VFT, LLC and PJM Interconnection, L.L.C.*
Docket Nos. ER13–1177, 1178 and 1179, *PJM Interconnection, L.L.C. and Eastern Kentucky Power Cooperative, Inc.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–708, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners.*
Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners.*
Docket No. ER13–89, *MidAmerican Energy Company and Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–101, *American Transmission Company LLC and the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–84, *Cleco Power LLC.*
Docket No. ER13–95, *Entergy Arkansas, Inc.*
Docket No. ER13–80, *Tampa Electric Company.*
Docket No. ER13–86, *Florida Power Corporation.*
Docket No. ER13–104, *Florida Power & Light Company.*
Docket No. NJ13–2, *Orlando Utilities Commission.*
Docket Nos. ER13–366 and ER13–367, *Southwest Power Pool, Inc.*
Docket No. ER13–83, *Duke Energy Carolinas LLC and Carolina Power & Light Company.*
Docket No. ER13–88, *Alcoa Power Generating, Inc.*
Docket No. ER13–107, *South Carolina Electric & Gas Company.*

For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: June 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14734 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–30–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Virginia Southside Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Virginia Southside Expansion Project proposed by Transcontinental Gas Pipe Line Company (Transco) in the above-referenced docket. Transco requests authorization to construct, modify, operate, and maintain a new natural gas pipeline and associated facilities in Virginia, Maryland, Pennsylvania, New Jersey and North Carolina.

The EA assesses the potential environmental effects of the construction and operation of the Virginia Southside Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers (USACE) Norfolk, Virginia and Wilmington, North Carolina Districts participated as a cooperating agency in

the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The USACE intends to adopt and use the EA to issue an easement on federal lands to Transco.

The proposed Virginia Southside Expansion Project includes the following facilities:

- Approximately 91 miles of new 24-inch-diameter natural gas pipeline (referred to as SVL B);
- Approximately 7 miles of new 24-inch-diameter natural gas pipeline (referred to as the Brunswick Lateral);
- A new 21,830-horsepower (hp) compressor station (Compressor Station 166);
- An interconnection and pressure regulating station at the joining of the SVL B and Brunswick Lateral pipelines in Brunswick County;
- One new meter station, line heaters, and pig [1] receiver at the terminus of the Brunswick Lateral; and
- Seven mainline valves along the proposed SVL B pipeline.

The proposed Virginia Southside Expansion Project also includes modifications to existing facilities:

- Five mainline valves and three meter stations in Maryland; Pennsylvania; New Jersey; North Carolina; and
- Compressor Station 205 in New Jersey.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before July 15 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP13–30–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–30). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: June 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14729 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

[1] A ''pig'' is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

[2] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–495–000]

Tallgrass Interstate Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Pony Express Pipeline Conversion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) of the Pony Express Pipeline Conversion Project (PXP Conversion Project) proposed by Tallgrass Interstate Gas Transmission, LLC, (TIGT) formerly known as Kinder Morgan Interstate Gas Transmission, LLC (KMIGT) in the above referenced docket.

The EA assesses the potential environmental effects of the construction and operation of the proposed Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

TIGT proposes to: (1) Abandon certain natural gas pipeline facilities and the service by transfer to an affiliate, Tallgrass Pony Express Pipeline, LLC (TPXP) for the purpose of converting the facilities to oil transportation facilities; and (2) construct and operate certain replacement type facilities necessary to continue service to existing natural gas firm transportation customers. TIGT also is seeking authorization to construct certain new compression, pipeline segments and interconnects and has agreed to enter into transportation arrangements with four natural gas transmission companies in order to maintain service for the long-term customer needs of approximately 104,000 dekatherms per day (Dth/day). The proposed activities include the following:

- Abandonment of a 432.4-mile pipeline segment (20-inch and 24-inch diameter) to be transferred by sale to TPXP;
- Abandonment and removal of three natural gas mainline compressor stations, four meter stations, and certain ancillary facilities;
- Construction of a new mainline compressor station referred to as the Tescott Compressor Station in Ottawa County, Kansas;
- Construction of a 4-inch-diameter, 4-mile-long lateral pipeline in Colorado;
- Construction of a 22-mile-long, 4-inch-diameter lateral pipeline in Nebraska and Kansas;
- Construction of two booster compressor units and certain ancillary facilities at the existing Glenrock Compressor Station in Wyoming and the existing Yuma Compressor Station in Colorado; and
- Construction/conversion/modification of six meter stations to enable deliveries into and/or receipts from other interstate pipeline systems.

The FERC staff mailed copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before July 15, 2013.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances, please reference the project docket numbers (CP12–495–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St. NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–495). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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Dated: June 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14728 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–036]

Sabine River Authority of Texas and Sabine River Authority, State of Louisiana; Notice of Availability of the Draft Environmental Impact Statement for the Toledo Bend Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for license for the Toledo Bend Hydroelectric Project (FERC No. 2305) and has prepared a draft environmental impact statement (EIS) for the project.

The existing project is located on the Sabine River between river mile (RM) 147 and RM 279, affecting lands and

waters in Panola, Shelby, Sabine, and Newton Counties, Texas, and De Soto, Sabine, and Vernon Parishes, Louisiana. The project occupies lands within the Sabine National Forest in Texas and the Indian Mounds Wilderness Area, administered by the U.S. Department of Agriculture—Forest Service.

The draft EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the Toledo Bend Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the draft EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by August 5, 2013, and should reference Project No. 2305–036. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Commission staff will hold two public meetings for the purpose of receiving comments on the draft EIS. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization comments, while the evening meeting is primarily for receiving input from the public. All interested individuals and entities will be invited to attend one or both of the public meetings. A notice detailing the exact date, time, and location of the public meetings will be forthcoming.

For further information, please contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: June 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14727 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS13–3–000]

KPC Pipeline, LLC; Notice of Filing

Take notice that on May 30, 2013, KPC Pipeline, LLC filed a request for partial exemption from the affiliate standards of conduct set forth in Part 358 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 358. KPC specifically request waiver of the standards of conduct applicable to the separation of functions, information sharing prohibitions, and no-conduit rule, 18 CFR 358.6 and 358.7(a).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 28, 2013.

Dated: June 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14736 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14519–000]

Ted P. Sorenson; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 1, 2013, Ted P. Sorenson filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the St. Mary Drops Hydroelectric Project (project) to be located on the St. Mary Canal System, 27 miles north Browning in Glacier County, Montana. The St. Mary Canal System is part of the Milk River Project, which is managed by the Bureau of Reclamation. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) A 1.5-mile-long canal to replace the existing drop structure on the St. Mary Canal; (2) a 0.25-mile-long, 9.5-foot-diameter penstock; (3) a powerhouse containing two Francis turbines with a total installed capacity of 3.5 megawatts discharging project flows directly into the St. Mary Canal; (4) a 3.5-mile-long, 12.5-kilovolt transmission line extending from the project powerhouse to an existing transmission line; and (5) appurtenant facilities. The estimated

annual generation of the project would be 21 gigawatt-hours.

Applicant Contact: Mr. Ted P. Sorenson, Sorenson Engineering, Inc., 5203 South 11th East, Idaho Falls, Idaho 83404; phone: (208) 522–8069.

FERC Contact: Kim Nguyen; phone: (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14519) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14731 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–487–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on May 30, 2013, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed a prior notice application pursuant to sections 157.205 and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Tennessee's blanket certificate issued in Docket No. CP82–413–000, to abandon in place and by removal two redundant and obsolete pipeline segments that cross the Big Sandy River north of Burnaugh, Kentucky, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Thomas G. Joyce, Manager, Certificates & Compliance, Tennessee Gas Pipeline Company, L.L.C, 1001 Louisiana Street, Houston, Texas 77002, or telephone (713) 420–3299 or fax (713) 420–1605or by email *tom_joyce@kindermorgan.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14733 Filed 6–19–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9531–6]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 0658.11; NSPS for Pressure Sensitive Tape and Label Surface Coating; 40 CFR part 60, subparts A and RR; was approved on 05/01/2013; OMB Number 2060–0004; expires on 05/31/2016; Approved without change.

EPA ICR Number 0940.26; Ambient Air Quality Surveillance (Final Rule for PM NAAQS); 40 CFR part 58; was approved on 05/01/2013; OMB Number 2060–0084; expires on 01/31/2015; Approved without change.

EPA ICR Number 2104.05; Brownfields Programs—Revitalization Grantee Reporting (Revision); 40 CFR parts 30–31; was approved on 05/07/2013; OMB Number 2050–0192; expires on 05/31/2016; Approved with change.

EPA ICR Number 2044.05; NESHAP for Plastic Parts and Products Surface Coating; 40 CFR part 63, subparts A and PPPP; was approved on 05/07/2013; OMB Number 2060–0537; expires on 05/31/2016; Approved without change.

EPA ICR Number 0328.16; Spill Prevention, Control and Countermeasure (SPCC) Plans (Renewal); 40 CFR part 112; was approved on 05/09/2013; OMB Number 2050–0021; expires on 05/31/2016; Approved without change.

EPA ICR Number 2300.10; Greenhouse Gas Reporting Program (Renewal); 40 CFR parts 86, 89, 90, 94, 98, 600, 1033, 1039, 1042, 1045, 1048, 1051, 1054 and 1065; was approved on 05/15/2013; OMB Number 2060–0629; expires on 05/31/2016; Approved with change.

EPA ICR Number 2062.05; NESHAP for Site Remediation; 40 CFR part 63, subparts A and GGGGG; was approved on 05/28/2013; OMB Number 2060–0534; expires on 05/31/2016; Approved without change.

EPA ICR Number 1381.10; Solid Waste Disposal Facility Criteria (Renewal); 40 CFR part 258; was approved on 05/28/2013; OMB Number 2050–0122; expires on 05/31/2016; Approved without change.

Comment Filed

EPA ICR Number 2473.01; RFS2 Voluntary RIN Quality Assurance Program; in 40 CFR part 80; OMB filed comment on 05/14/2013.

EPA ICR Number 2481.01; NESHAP for Gas-Fired Melting Furnaces Located at Wool Fiberglass Manufacturing Area Sources; in 40 CFR part 63, subparts A and NN; OMB filed comment on 05/28/2013.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2013–14748 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0041–0008; FRL 9531–4]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; RadNet (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''RadNet'' (EPA ICR No. 0877.11, OMB Control No. 2060–0015) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through June 30, 2013. Public comments were previously requested via the **Federal Register** 78 FR 11171 on February 15, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 22, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2003–0041–0008 to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Charles M. Petko, Office of Radiation and Indoor Air (ORIA), National Analytical Radiation Environmental Laboratory (NAREL), 540 South Morris Avenue, Montgomery, Alabama 36115–2601. TEL: 334–270–3411; FAX Number: 334–270–3454; and email address: *petko.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: RadNet is a national network of stations collecting sampling media that include air, precipitation, drinking water, and milk. Samples are sent to EPA's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, where they are analyzed for radioactivity. RadNet provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations, usually operated by state and local personnel, participate in RadNet voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information pertaining to sample location, e.g., sample type, sample location, length of sampling period, and volume represented.

Form Numbers:

5900–23 RadNet Equipment and Supply Request Form.
5900–24 RadNet Air Particulate Sample Report.
5900–27 RadNet Precipitation Report.
5900–28 RadNet Pasteurized Milk Report.
5900–29 RadNet Drinking Water Report.
5900–30 Radnet Legacy Air Sample.

Respondents/affected entities: Volunteer collectors of milk, air, precipitation, and drinking water samples to support EPA's national environmental radiation monitoring network known as RadNet.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 302 (total).

Frequency of response: Frequency varies according to medium being sampled: milk, quarterly; drinking water, quarterly; rain (precipitation), as events occur; and air, twice weekly.

Total estimated burden: 8243 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $299,913 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 467 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is a result of improved technology that reduces manual calculations for the real-time air monitors and allows some operations to be performed by EPA personnel at NAREL rather than requiring respondent time.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14747 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0402; FRL–9826–8]

Proposed Information Collection Request; Comment Request; EPA–ICR No. 1774.05—Mobile Air Conditioner Retrofitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Mobile Air Conditioner Retrofitting Program'' (EPA ICR No. 1774.05, OMB Control No. 2060–0450) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a ''proposed extension of the ICR, which is currently approved through October 31, 2013''. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 19, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2013–0402, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Rebecca von dem Hagen, Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, MC 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9445; fax number: (202) 343–2362; email address: *vondemhagen.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA's Significant New Alternatives Policy (SNAP) program implements Section 612 of the 1990 Clean Air Act (CAA) Amendments which authorized the Agency to establish regulatory requirements to ensure that ozone-depleting substances (ODS) are replaced by alternatives that reduce overall risks to human health and the environment, and to promote an expedited transition to safe substitutes. To promote this transition, CAA specified that EPA establish an information clearinghouse of available alternatives, and coordinate with other Federal agencies and the public on research, procurement practices, and information and technology transfers.

Since the program's inception in 1994, SNAP has reviewed over 400 new chemicals and alternative manufacturing processes for a wide range of consumer, industrial, space exploration, and national security applications. Roughly 90% of alternatives submitted to EPA for review have been listed as acceptable for a specific use, typically with some condition or limit to minimize risks to human health and the environment.

Regulations promulgated under SNAP require that Motor Vehicle Air Conditioners (MVACs) retrofitted to use a SNAP substitute refrigerant include basic information on a label to be affixed to the air conditioner. The label includes the name of the substitute refrigerant, when and by whom the retrofit was performed, environmental and safety information about the substitute refrigerant, and other information. This information is needed so that subsequent technicians working on the MVAC system will be able to service the equipment properly, decreasing the likelihood of significant refrigerant cross-contamination and potential failure of air conditioning systems and recovery/recycling equipment.

Form Numbers: EPA ICR No. 1774.05, OMB Control No. 2060–0450.

Respondents/affected entities: Entities potentially affected by this action are new and used car dealers, gas service stations, top and body repair shops, general automotive repair shops, automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

Respondent's obligation to respond: Mandatory under 40 CFR 82.180.

Estimated number of respondents: 294 (total).

Frequency of response: Once per retrofit of a motor vehicle air conditioner.

Total estimated burden: 8 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $580 (per year), includes $10 (per year) annualized

capital or operation & maintenance costs.

Changes in Estimates: There is decrease of 1,492 hours in the total estimated respondent burden compared with the ICR currently approved by OMB (per year). This decrease is based on the decline of CFC–12 MVACs in service today. EPA estimated that the total percent of CFC–12 MVACs retrofitted in 2003 was 1.5%, which equals an estimated 500,000 CFC–12 MVACs retrofitted to R–134a. The number of MVACs originally designed to use CFC–12 as well as the number of those retrofitted to R–134a has been decreasing every year and EPA estimates a continued reduction in the number of CFC–12 MVACs retrofits will occur during the next three years. EPA estimates that currently, in 2013, there are 330,000 MVACs originally designed to use CFC–12 operating in the U.S. EPA estimates that in 2014, 2015 and 2016 the number of cars originally designed to use CFC–12 will decrease to 170,000, 84,000 and 40,000, respectively. Of these, EPA estimates that 0.1% will be retrofitted annually to use alternative refrigerants between October 2013 and September 2016. Therefore, EPA estimates that in 2014, 2015 and 2016 the numbers of MVACs to be retrofitted are 170, 84 and 40, respectively; resulting in a total of 294 MVAC retrofits over the three years of this ICR. These reductions are due to the decrease of CFC–12 MVACs available on the road for retrofitting.

Dated: June 10, 2013.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2013–14753 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0744; FRL–9531–7]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an Information Collection Request (ICR), Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients (EPA ICR No. 0597.11, OMB No. 2070–0024), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2013. Public comments were previously requested via the **Federal Register** (77 FR 69821) on November 21, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 22, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPP–2012–0744, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Scott Drewes, Field and External Affairs Division, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone number:* (703) 347–0107; *fax number:* (703) 308–5884; *email address: Drewes.Scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The use of pesticides to increase crop production often results in pesticide residues in or on the crop. To protect the public health from unsafe pesticide residues, EPA sets limits on the nature and level of residues permitted pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). A pesticide may not be used on food or feed crops unless the Agency has established a tolerance (maximum residue limit) for the pesticide residues on that crop or established an exemption from the requirement to have a tolerance.

Under the law, EPA is responsible for ensuring that the maximum residue levels likely to be found in or on food/feed are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, EPA must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. If the data are adequate for EPA to determine that there is a reasonable certainty that no harm will result from aggregate exposure, the Agency will establish the tolerance or grant an exemption from the requirement of a tolerance.

This ICR only applies to the information collection activities associated with the submission of a petition for a tolerance action. While EPA is authorized to set pesticide tolerances, the Food and Drug Administration (FDA) is responsible for their enforcement. Food or feed commodities found to contain pesticide residues in excess of established tolerances are considered adulterated, and are subject to seizure by FDA, and may result in civil penalties.

Trade secret or CBI is frequently submitted to EPA in support of a tolerance petition because submissions usually include the manufacturing process, product formulation, and supporting data. When such information is provided to the Agency, the information is protected from disclosure under FIFRA section 10. CBI data submitted to the EPA is handled strictly in accordance with the provisions of the FIFRA Confidential Business Information Security Manual.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this ICR include anyone who files a petition asking EPA to take a specific tolerance action. While any entity can file a petition with EPA, petitions typically come from those businesses engaged in the manufacturing of pesticides and the Interregional Research Project No. 4 (IR–4). The NAICS codes for the most frequent type of respondent are 325320 (pesticide and other agricultural chemical manufacturing) and 541600 (management, scientific, and technical consulting services).

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 137.

Frequency of response: On occasion.

Total estimated burden: 236,800 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $21,280,921 (per year). This is the estimated burden cost; there is no cost for capital investment or maintenance and operational costs in this information collection.

Changes in the Estimates: There is an increase of 58,515 hours in the total estimated respondent burden hours compared with the ICR currently approved by OMB. This increase reflects EPA's updating of the burden estimate to account for an increase in the estimated average number of tolerance petitions submitted annually from 103 to 137, which resulted in a change to the annual burden hours for respondents from 178,285 in the previous renewal to 236,800 in the current renewal. This change is an adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14749 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9826–7; CERCLA–04–2013–3761]

Columbia Organic Chemical Company Site, Columbia, Richland County, South Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with Stephen Reichlyn concerning the Columbia Organic Chemical Company Superfund Site located in Columbia, Richland County, South Carolina. The settlement addresses cost incurred by the agency in conducting a fund lead Removal.

DATES: The Agency will consider public comments on the settlement until July 22, 2013. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from EPA's Environmental Protection Specialist, Ms. Paula V. Painter. Submit your comments by site name Columbia Organic Chemical Company by one of the following methods:

- *www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.*
- *Email. Painter.Paula@epa.gov.*
- U.S. Environmental Protection Agency, Attn: Paula V. Painter, Superfund Division, 61 Forsyth Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: May 6, 2013.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2013–14751 Filed 6–19–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, June 25, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–14899 Filed 6–18–13; 4:15 pm]

BILLING CODE 6715–01–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 no later than July 5, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *The Amanda Marie Rios 2012 Irrevocable Trust, Paul Roberts, Trustee; The Amy Beth Windle Oakley 2012 Irrevocable Trust, Paul Roberts, Trustee; The John David Windle 2012 Irrevocable Trust, Paul Roberts, Trustee; The Mark Edward Windle 2012 Irrevocable Trust, Paul Roberts, Trustee; and The Thomas Alfred Windle 2012 Irrevocable Trust, Paul Roberts, Trustee,* all of Livingston, Tennessee; to join the currently approved control, group of The Jack Windle Irrevocable Life Insurance Trust, Joyce D. Windle, John D. Copeland, and Thomas A. Windle, as a trustee Trustees; The Credit Shelter Trust under the Last Will and Testament of Jack Allen Windle, Joyce D. Windle, John D. Copeland, and Thomas A. Windle, Trustees, and The Tennessee Qualified Terminable Interest Trust; Joyce D. Windle, John D. Copeland, and Thomas A. Windle, Trustees, for Overton Financial Services, Inc., all of Livingston, Tennessee. Collectively, the new control group controls 100 percent of the outstanding stock of Overton Financial Services and its subsidiary, Union Bank & Trust Company, both in Livingston, Tennessee.

Board of Governors of the Federal Reserve System, June 14, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–14635 Filed 6–19–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Overton Financial Corporation, Overton, Texas;* as part of a corporate reorganization to acquire through Overton Delaware Corporation and Lindale Delaware Corporation, both in Dover, Delaware, additional voting shares of Longview Financial Corporation, and thereby indirectly acquire additional voting shares of Texas Bank and Trust Company, both in Longview, Texas.

Board of Governors of the Federal Reserve System, June 17, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–14715 Filed 6–19–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–19226–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: The Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0275 scheduled to expire on October 31, 2013. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before July 22, 2013.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.Collection Clearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0275 and document identifier HHS–OS–19226–30D for reference.

Information Collection Request Title: Performance Improvement and Management System (PIMS).

OMB No.: 0990–0275.

Abstract: This request for clearance is to extend data collection activities by three (3) years for a currently approved collection using the OMB approved Performance Data System (PDS), the tool used by Office of Minority Health (OMH) to collect program management and performance data for all OMH-funded projects. Grantee data collection via the Uniform Data Set (UDS) (original data collection system) was first approved by OMB on June 7, 2004 (OMB No. 0990–275). OMB approval was also received for modifications to the UDS to accommodate grant programs that were not required to use the UDS at the time the system was developed (August 23, 2007), which upgraded the data collection tool from the UDS to the PDS (August 31, 2010). Clearance is due to expire on October 31, 2013.

Need and Proposed Use of the Information: The clearance is also to continue data collection using the PDS, enhancing the system to improve functionality and to alter questions to improve data collection completeness and quality. The functionality and question improvements are intended to improve OMH's ability to comply with Federal reporting requirements and monitor and evaluate performance by enabling the efficient collection of more performance-oriented data which are tied to OMH-wide performance reporting needs. The ability to monitor and evaluate performance in this manner, and to work towards continuous program improvement are basic functions that OMH must be able to accomplish in order to carry out its mandate with the most effective and appropriate use of resources.

Likely Respondents: Respondents for this data collection include the project directors leading OMH-funded projects and/or the date entry persons assigned for each OMH-funded project. Affected public includes not-for-profit institutions and State, Local, or Tribal Governments.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

	Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
PDS Burden	OMH Grantee	PDS	100	4	1.5	600

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–14679 Filed 6–19–13; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60–Day–13–0666]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB No. 0920–0666), exp. 12/31/2015—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks. The NHSN consists of six components: Patient Safety, Healthcare Personnel Safety, Biovigilance, Long-Term Care Facility (LTCF), Dialysis, and Outpatient Procedure.

The new Dialysis Component was developed in order to separate reporting of dialysis events from the Patient Safety Component. The new component will tailor the NHSN user interface for dialysis users to simplify their data entry and analyses processes as well as provide options for expanding the Dialysis Component in the future to include dialysis surveillance in settings other than outpatient facilities.

The new Outpatient Procedure Component was developed to gather data on the impact of infections and other outcomes related to outpatient procedures that are performed in settings such as Ambulatory Surgery Centers (ASCs), Hospital Outpatient Departments (HOPDs), and physicians' offices. Three event types will be monitored in this new component: Same Day Outcome Measures, Prophylactic Intravenous (IV) Antibiotic Timing, and Surgical Site Infections (SSI).

This revision submission includes two new NHSN components and their corresponding forms. The Dialysis Component consists of changes to three previously approved forms and the addition of four new forms. These new forms include component specific monthly reporting plan, prevention process measures monthly monitoring, patient influenza vaccination, and patient influenza vaccination denominator forms. The Outpatient Procedure Component consists of four new forms: component specific annual survey, monthly reporting plan, event, and monthly denominators and summary forms.

Further, the breadth of organism susceptibility data required on all of the healthcare-associated infection (HAI) report forms (i.e., BSI, UTI, SSI, PNEU (VAP and VAE), DE, LTUTI, and MDRO Infection Surveillance) has been reduced for the purposes of streamlining, simplification, and removing undue burden where possible. Significant changes were made to the NHSN Biovigilance Component forms as a result of a subject matter expert and stakeholder working groups. This includes the removal of the monthly incident summary form. A brand new form was added (Form 57.600—State Health Department Validation Record) to collect aggregate validation results that will be gathered by state health departments when conducting facility-level validation of NHSN healthcare-associated infection (HAI) data within their jurisdictions using the CDC/NHSN Validation Guidance and Toolkits.

Additionally, minor revisions have been made to 17 other forms within the package to clarify and/or update surveillance definitions.

The previously approved NSHN package included 48 individual collection forms; the current revision request adds nine new forms and removes one form for a total of 56 forms. The reporting burden will increase by 542,123 hours, for a total of 4,104,776 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form number and name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Registered Nurse (Infection Preventionist).	57.100: NHSN Registration Form	2,000	1	5/60	167
Registered Nurse (Infection Preventionist).	57.101: Facility Contact Information	2,000	1	10/60	333
Registered Nurse (Infection Preventionist).	57.103: Patient Safety Component—Annual Hospital Survey.	6,000	1	30/60	3,000
Registered Nurse (Infection Preventionist).	57.105: Group Contact Information	6,000	1	5/60	500
Registered Nurse (Infection Preventionist).	57.106: Patient Safety Monthly Reporting Plan.	6,000	12	35/60	42,000
Registered Nurse (Infection Preventionist).	57.108: Primary Bloodstream Infection (BSI).	6,000	36	32/60	115,200
Registered Nurse (Infection Preventionist).	57.111: Pneumonia (PNEU)	6,000	72	29/60	208,800
Registered Nurse (Infection Preventionist).	57.112: Ventilator-Associated Event	6,000	144	22/60	316,800
Infection Preventionist	57.114: Urinary Tract Infection (UTI)	6,000	27	29/60	78,300
Staff RN	57.116: Denominators for Neonatal Intensive Care Unit (NICU).	6,000	9	3	162,000
Staff RN	57.117: Denominators for Specialty Care Area (SCA)/Oncology (ONC).	6,000	9	5	270,000
Staff RN	57.118: Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	6,000	54	5	1,620,000
Registered Nurse (Infection Preventionist).	57.120: Surgical Site Infection (SSI)	6,000	36	29/60	104,400
Staff RN	57.121: Denominator for Procedure	6,000	540	5/60	270,000
Laboratory Technician	57.123: Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables.	6,000	12	5/60	6,000
Pharmacy Technician	57.124: Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables.	6,000	12	5/60	6,000
Registered Nurse (Infection Preventionist).	57.125: Central Line Insertion Practices Adherence Monitoring.	1,000	100	5/60	8,333
Registered Nurse (Infection Preventionist).	57.126: MDRO or CDI Infection Form	6,000	72	29/60	208,800
Registered Nurse (Infection Preventionist).	57.127: MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	6,000	24	12/60	28,800
Registered Nurse (Infection Preventionist).	57.128: Laboratory-identified MDRO or CDI Event.	6,000	240	15/60	360,000
Registered Nurse (Infection Preventionist).	57.130: Vaccination Monthly Monitoring Form–Summary Method.	100	5	14	7,000
Registered Nurse (Infection Preventionist).	57.131: Vaccination Monthly Monitoring Form–Patient-Level Method.	100	5	2	1,000
Registered Nurse (Infection Preventionist).	57.133: Patient Vaccination	100	250	10/60	4,167
Registered Nurse (Infection Preventionist).	57.137: Long-Term Care Facility Component—Annual Facility Survey.	250	1	45/60	188
Registered Nurse (Infection Preventionist).	57.138: Laboratory-identified MDRO or CDI Event for LTCF.	250	8	15/60	500
Registered Nurse (Infection Preventionist).	57.139: MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	250	12	5/60	250
Registered Nurse (Infection Preventionist).	57.140: Urinary Tract Infection (UTI) for LTCF.	250	9	27/60	1,013
Registered Nurse (Infection Preventionist).	57.141: Monthly Reporting Plan for LTCF	250	12	5/60	250
Registered Nurse (Infection Preventionist).	57.142: Denominators for LTCF Locations	250	12	3	9,000
Registered Nurse (Infection Preventionist).	57.143: Prevention Process Measures Monthly Monitoring for LTCF.	250	12	5/60	250
Registered Nurse (Infection Preventionist).	57.150: LTAC Annual Survey	400	1	30/60	200
Registered Nurse (Infection Preventionist).	57.151: Rehab Annual Survey	1,000	1	25/60	417
Occupational Health RN/Specialist.	57.200: Healthcare Personnel Safety Component Annual Facility Survey.	50	1	8	400

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form number and name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Occupational Health RN/Specialist.	57.203: Healthcare Personnel Safety Monthly Reporting Plan.	50	9	10/60	75
Occupational Health RN/Specialist.	57.204: Healthcare Worker Demographic Data.	50	200	20/60	3,333
Occupational Health RN/Specialist.	57.205: Exposure to Blood/Body Fluids	50	50	1	2,500
Occupational Health RN/Specialist.	57.206: Healthcare Worker Prophylaxis/Treatment.	50	30	15/60	375
Laboratory Technician	57.207: Follow-Up Laboratory Testing	50	50	15/60	625
Occupational Health RN/Specialist.	57.210: Healthcare Worker Prophylaxis/Treatment-Influenza.	50	50	10/60	417
Medical/Clinical Laboratory Technologist.	57.300: Hemovigilance Module Annual Survey.	500	1	2	1,000
Medical/Clinical Laboratory Technologist.	57.301: Hemovigilance Module Monthly Reporting Plan.	500	12	1/60	100
Medical/Clinical Laboratory Technologist.	57.303: Hemovigilance Module Monthly Reporting Denominators.	500	12	1	6,000
Medical/Clinical Laboratory Technologist.	57.304: Hemovigilance Adverse Reaction ...	500	48	15/60	6,000
Medical/Clinical Laboratory Technologist.	57.305: Hemovigilance Incident	500	12	10/60	1,000
Staff RN	57.400: Outpatient Procedure Component—Annual Facility Survey.	5,000	1	5/60	417
Staff RN	57.401: Outpatient Procedure Component—Monthly Reporting Plan.	5,000	12	15/60	15,000
Staff RN	57.402: Outpatient Procedure Component Event.	5,000	25	40/60	83,333
Staff RN	57.403: Outpatient Procedure Component—Monthly Denominators and Summary.	5,000	12	40/60	40,000
Registered Nurse (Infection Preventionist).	57.500: Outpatient Dialysis Center Practices Survey.	6,000	1	1.75	10,500
Staff RN	57.501: Dialysis Monthly Reporting Plan	6,000	12	5/60	6,000
Staff RN	57.502: Dialysis Event	6,000	60	13/60	78,000
Staff RN	57.503: Denominator for Outpatient Dialysis	6,000	12	6/60	7,200
Staff RN	57.504: Prevention Process Measures Monthly Monitoring for Dialysis.	600	12	30/60	3,600
Staff RN	57.505: Dialysis Patient Influenza Vaccination.	250	75	10/60	3,125
Staff RN	57.506: Dialysis Patient Influenza Vaccination Denominator.	250	5	10/60	208
Epidemiologist	57.600: State Health Department Validation Record.	152	50	15/60	1,900
Total	.....	.....	.....	.....	4,104,776

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director.

[FR Doc. 2013–14752 Filed 6–19–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Personal Responsibility Education Program (PREP) Multi-Component Evaluation—Data Collection Related to the Performance Analysis Study and the Impact and the In-depth Implementation Study.

OMB No.: 0970–0398.

Description: The Office of Data Analysis, Research, and Evaluation (HHS/ACF/ACYF/ODARE) in the Administration for Children, Youth and Families (ACYF) and the Office of Planning, Research, and Evaluation (HHS/ACF/OPRE) in the Administration for Children and Families (ACF) propose a data collection activity as part of the Personal Responsibility Education Program (PREP) Multi-Component Evaluation. The goals of the PREP Multi-Component Evaluation are to document how PREP programs are designed and implemented in the field, collect performance measure data for PREP programs, and assess the effectiveness of selected PREP-funded programs.

The evaluation includes three primary interconnected components or ''studies:''

1. The Impact and In-depth Implementation Study (IIS)
2. The Design and Implementation Study (DIS)
3. The Performance Analysis Study (PAS)

This proposed information collection activity includes: (a) All measures for the PAS for Competitive PREP grantees; (b) follow-up measures for the IIS impact analysis; and (c) measures for the IIS in-depth implementation

analysis. A description of all three studies and a description of the specific activities proposed were provided in a 60 Day **Federal Register** Notice posted in Vol. 78, No. 24, p.8150 on February 5, 2013.

Respondents: Program applicants (i.e., adolescents); Data managers (e.g., at schools or state agencies); Program administrators and staff; Participating youth; and Community members.

Annual Burden Estimates

ANNUAL BURDEN: ALREADY APPROVED

[still in use]

Evaluation component	Total annual burden hours
Field Data Collection	240
Design and Implementation Study	30
Performance Analysis Study	29,647
In-depth Implementation & Impact Study	1,425
Total	31,342

ANNUAL BURDEN: CURRENT REQUEST

Activity	Respondent	Total number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden hours
Performance Analysis Study: CPREP Grantees					
Entry Survey	Program Participants	23,565	1	.08333	655
Exit Survey	Program Participants	30,615	1	.16667	1,701
Performance Reporting System Data Entry Form	Grantees	37	2	24	592
Implementation Site Data Collection Protocol	Implementation Sites	300	2	8	1,600
In-depth Implementation and Impact Analysis Study					
Focus group guide with participants	Program Participants	320	1	1.5	160
Semi-structured interview topic guide	Program staff and stakeholders.	160	2	1	107
Staff Survey	Program Staff	100	2	.5	33
First Follow-Up Survey	Program Participants	4,800	1	.75	1,200
Second Follow-Up Survey	Program Participants	2,250	1	.75	563
Program Attendance Data Collection Protocol	Program Staff	90	12	.25	90
Total Annual Burden Hours being Requested.					6,701

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration, for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2013–14700 Filed 6–19–13; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.297]

Announcement of the Award of Single-Source Expansion Supplement Grants to Eight Personal Responsibility Education Program Innovative Strategies (PREIS) Grantees

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: Notice of the award of single-source expansion supplement grants to eight Personal Responsibility Education Program Innovative Strategies (PREIS) grantees to support the expansion of program services necessary to meet the requirements for reporting performance measures, conducting evaluation-related activities, and strengthening program outcomes for youth participants.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Adolescent Development and Support (DADS) announces the award of single-source expansion supplement grants to eight PREIS grantees for the purpose of expanding program participation and/or sites to support the increase of data necessary to determine the level of program effectiveness. In FY 2010, FYSB awarded 13 cooperative agreement grants under Funding Opportunity Announcement (FOA) number: OPHS/OAH/TPP PREP Tier 2–2010. Under this FOA, a total of $9.7 million was made available on a competitive basis to implement and test innovative strategies.

Single-source program expansion supplement awards are made to the following PREIS grantees:

Grantee organization	City	State	Supplement award amount
Children's Hospital Los Angeles	Los Angeles	CA	$52,538.00
Cicatelli Associates Inc	New York	NY	130,506.00
Demoiselle 2 Femme	Chicago	IL	34,981.00
Education Development Center, Inc	Newton	MA	51,181.00
Lighthouse Outreach	Hampton	VA	50,000.00
OhioHealth	Columbus	OH	9,660.00
Oklahoma Institute for Child Advocacy	Oklahoma City	OK	108,009.00
The Village for Families & Children, Inc	Hartford	CT	60,000.00

DATES: The period of support under these supplements is September 30, 2012, through September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Marc Clark, Program Director, Adolescent Pregnancy Prevention Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1250 Maryland Avenue SW., Suite 800, Washington, DC 20024. *Telephone:* 202–205–8496; *Email: marc.clark@acf.hh.gov.*

SUPPLEMENTARY INFORMATION: The award of eight single source expansion supplement grants to PREIS grantees is required because of the necessary expansion of the original scope of approved activities. In reviewing grantees' aggressive program and evaluation plans, combined with recruitment efforts to date, FYSB has determined that that these eight grantees would be required to increase the number of program participants and/or increase data collection efforts. Increased funding will help the grantees' programs increase recruitment and retention strategies for program participants that will allow grantees to obtain the minimal statistical power required to report significant outcome data. Outcome data will determine the effectiveness of the implemented pregnancy prevention models used in the program. Thus, the increased number of program participants supports the evaluation requirements outlined in the FOA and the Affordable Care Act.

Additionally, grantees are required to report on performance measures that were specifically defined by FYSB. The data collection will require additional grantee staff time and other resources to compile and report on performance indicators. Performance indicators are based upon the performance measures established by the Department of Health and Human Services (HHS) to include: (a) The number of youth served and hours of service delivery; (b) fidelity to the program model or adaptation of the program model for the target population; (c) community partnerships and competence in working with the target population; and (d) reported gains in knowledge and intentions, and changes in self-reported behaviors of participants.

Award amounts for the eight single source expansion supplement grants total $496,875 and will support activities from September 30, 2012, through September 29, 2013.

Statutory Authority: Section 2953 of the Patient Protection and Affordable Care Act of 2010, Public. Law 111–148, added Section 513 to Title V of the Social Security Act, codified at 42 U.S.C. 713, authorizing the Personal Responsibility Education Program.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2013–14741 Filed 6–19–13; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0010]

Cooperative Agreement To Support the Western Center for Food Safety

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for a cooperative agreement to support the Western Center for Food Safety (WCFS). FDA regards the continued support of WCFS as crucial to receiving invaluable insight into the food safety issues that it is directed to address through various provisions of the FDA Food Safety Modernization Act (FSMA). FDA concludes this partnership will enhance FDA's efforts to address the particularly complex issues surrounding the safety of agricultural production. Partnering with WCFS provides FDA with the opportunity to stimulate collaborations so that resources can be leveraged to maximize food safety research, education, and outreach efforts aimed at WCFS and FDA stakeholders particularly those within the agricultural community. A key outcome of this effort is to enhance FDA's implementation of the prevention oriented activities outlined in FSMA.

DATES: Important dates are as follows:

1. The application due date is July 15, 2013.
2. The anticipated start date is September, 2013.
3. The opening date is June 20, 2013.
4. The expiration date is July 16, 2013.

ADDRESSES: Submit the paper application to: Gladys Melendez, Grants Management (HFA–500), 5630 Fishers Lane, Rockville, MD 20857, and a copy to Kevin W. Robinson, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2118. For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Samir K. Assar, Center for Food Safety and Applied Nutrition, Food and Drug Administration, CPK1 Rm. 3A001, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1636; or Gladys Melendez, Grants Management Officer/Specialist, Office of Acquisition and Grants Services, Food and Drug Administration, 5630 Fishers Lane, Rm. 2032, Rockville, MD 20857, 301–827–7175.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *www.fda.gov/food/newsevents/default.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–13–023.
93.103.

A. Background

FDA is announcing its intention to receive and consider a single-source application for the award of a cooperative agreement in fiscal year 2013 (FY13) to the University of California-Davis, Davis, CA, to support WCFS.

The partnership between WCFS and FDA over the past 5 years has been very productive in supporting FDA's public health mission by conducting studies that address knowledge gaps surrounding the safe production of agricultural foods and education/outreach activities that provide the agricultural sector with information about food safety best practices. With the enactment of FSMA in 2011, the partnership has become increasingly important as FDA works to fulfill its mandate to develop a prevention-based modern food safety system. FSMA directs the Agency to develop and implement risk and science-based enforceable standards and enhance partnerships with its food safety stakeholders. The Agency's research strategy is focused on building the scientific foundation it needs to support the development and implementation of science-based standards. The strategy involves identifying and prioritizing its research needs based on its policymaking and implementation activities. WCFS has played a critical role in conducting studies that were used to inform policy, including regulations that are being developed under FSMA, and will continue to do so as the Agency further implements FSMA activities.

FDA regards the development and strengthening of public-private partnerships to be a key element of its FSMA implementation strategy, which involves providing education and outreach to private industry about its food safety standards in order to build industry capacity to comply with these standards prior to conducting enforcement activities. The Agency has a limited history with the agricultural community and seeks to use the strong relationships that academia has with this sector to facilitate education and outreach activities. The demonstrated ability of WCFS to successfully leverage resources through existing partnerships will continue to maximize the ability to achieve research, education, and outreach objectives domestically and internationally with available funds. The Agency is developing a technical assistance network that will be critical in providing technical assistance to the farming community in adopting and complying with components of FSMA. WCFS is optimally situated to be a key player in this network to deliver quality technical assistance to a broad range of food safety stakeholders in the agricultural community.

B. Research Objectives

This cooperative agreement will provide continued support so that WCFS can meet the following research objectives:

- Continue to conduct multidisciplinary applied laboratory, field, and educational research regarding the safety of agriculture production to generate practical solutions that can be implemented by the agricultural community and consequently, enhance food safety and food defense for FDA-regulated products.
- Continue to develop and maintain communication with various stakeholders, domestic and international, involved in food production and food safety in order to identify food safety knowledge gaps and opportunities to leverage resources.
- Continue to enhance technical assistance outreach and educational efforts through various channels, including seminars, presentations, serving on technical advisory boards and committees, and outreach through agriculture extension appointments.
- Continue to engage in multi-institutional collaborations to ensure that FDA has the most current scientific thinking on best agricultural practices across varying agro-ecological landscapes.
- Continue to assist the Agency in implementing food safety standards under FSMA.

C. Eligibility Information

The University of California-Davis (UC Davis), WCFS

Competition is limited to WCFS because FDA has determined that WCFS is uniquely qualified to fulfill the objectives outlined in the proposed cooperative agreement. The program has demonstrated the adaptability necessary to address FDA's evolving high-priority public health issues. This adaptability allows WCFS to successfully leverage resources across a variety of organizations including the U.S. Department of Agriculture—National Institute of Food and Agriculture, Center for Produce Safety, numerous industry boards, and also with universities across the country. This has led to the expansion of the program and has also increased their visibility as a food safety resource thus propagating additional collaborations. In addition, the WCFS locations at the UC Davis main campus and experimental stations provide invaluable access to one of the leading food production and food safety research institutions in the country with prominent researchers and access to agricultural producers, along with other public and private stakeholders. This established UC Davis network allows WCFS to offer technical assistance that will aid in the protection of public health by increasing the adoption and understanding of guidance and policy.

WCFS has conducted research on diverse agriculture production issues of importance to FDA including common routes of contamination on a farm, environmental contamination, and agricultural practices and possesses the ability to further expand their research into other production areas. The location of WCFS affords FDA the opportunity to obtain data from meaningful, field-based trials in an important food-producing area of the country. WCFS access to field sites for experimental trials is instrumental to FDA receiving the most current scientifically validated information that relates to actual agricultural conditions. WCFS has established research collaborations with research institutions throughout the United States including Florida, Arizona, Georgia, Ohio, and Hawaii to study the agro-ecological differences that may impact food safety in the agricultural sector. WCFS has also made available research tools that can be utilized by all research institutions that could facilitate industry compliance with preventive control standards. Information gleaned from this research has been made publicly available and has been useful to domestic and international stakeholders and often translates into proactive, science-based preventive controls. FDA has utilized this information when developing policy aimed at fulfilling its public health mission. Industry boards and grower groups have also incorporated WCFS generated information into their national and regional food safety guidance documents.

WCFS has also effectively provided extensive technical outreach and education through participation on high profile advisory boards/panels covering diverse agricultural topics including but not limited to good agricultural practices, tree nuts, veterinary science, and specialty crops that span the United States. Additionally, WCFS regularly outreaches to the agricultural community through conferences and meetings to provide information about best practices. Finally, WCFS and FDA have also provided opportunities for postgraduates to be trained and mentored by WCFS and FDA scientists in areas of field, laboratory, and educational research.

II. Award Information/Funds Available

A. Award Amount

The Center for Food Safety and Applied Nutrition at FDA intends to fund one award up to $2 million for FY13, with the possibility of four additional years of support, subject to the availability of funds. Future year amounts will depend on annual appropriations and successful performance.

B. Length of Support

The award will provide 1 year of support, with the possibility of four additional years of support, contingent upon satisfactory performance in the achievement of project and program reporting objectives during the preceding year and the availability of Federal fiscal year appropriations.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *www.fda.gov/food/newsevents/default.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application at *http://grants.nih.gov/grants/forms.htm.* For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit paper applications to the Grants Management Officer/Specialist listed above.

Dated: June 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14673 Filed 6–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by August 19, 2013.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

Submit electronic comments on the draft product-specific BE recommendations to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kris André, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of December 17, 2012 (77 FR 74669). This notice announces draft product-specific recommendations, either new or revised, that are being posted on FDA's Web site concurrently with publication of this notice.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing new draft product-specific BE recommendations for drug products containing the following active ingredients:

A
- Apixaban
- Artemether; Lumefantrine
- Asenapine maleate

B
- Balsalazide disodium

C
- Cycloserine
- Cyclosporine

E
- Eltrombopag olamine

F
- Fluoxetine

H
- Hydrochlorothiazide; Triamterene

M
- Medroxyprogesterone (multiple reference listed drugs)
- Methyltestosterone

Mirabegron
S
Sodium ferric gluconate
T
Timolol maleate
Trientine

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing revised draft product-specific BE recommendations for drug products containing the following active ingredients:

A
Albuterol sulfate (multiple reference listed drugs)
Ambrisentan
C
Carbidopa; Entacapone; Levodopa
Colesevelam
D
Dexamethasone; Tobramycin (multiple reference listed drugs and dosage forms)
Didanosine
Drospirenone; Estradiol
E
Entacapone
F
Fentanyl citrate
I
Isotretinoin
M
Minocycline hydrochloride
P
Phentermine hydrochloride; Topiramate
T
Tenofovir disoproxil fumarate
Topiramate (multiple reference listed drugs and dosage forms)

For a complete history of previously published **Federal Register** notices related to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may submit either electronic comments on any of the specific BE recommendations posted on FDA's Web site to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. The guidances, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.regulations.gov*.

Dated: June 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14675 Filed 6–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0938]

Guidance for Industry; Guidance on Abbreviated New Drug Applications: Stability Testing of Drug Substances and Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance entitled ''ANDAs: Stability Testing of Drug Substances and Products.'' FDA is recommending generic drug manufacturers follow the stability testing recommendations in the International Conference on Harmonisation (ICH) guidances Q1A (R2) through Q1E. The use of these ICH recommendations will standardize FDA's stability testing policies, which will help make the abbreviated new drug application (ANDA) review process more efficient.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Radhika Rajagopalan, Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., MPN2, rm. 243, HFD–640, Rockville, MD 20855, 240–276–8546.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''ANDAs: Stability Testing of Drug Substances and Products.'' Because of increases in the number and complexity of ANDAs and FDA's desire to standardize generic drug review, FDA is recommending that the generic drug industry follow the approach in the following stability related ICH guidances: (1) ''Q1A (R2) Stability Testing of New Drug Substances and Products,'' November 2003; (2) ''Q1B Photostability Testing of New Drug Substances and Products,'' November 1996; (3) ''Q1C Stability Testing for New Dosage Forms,'' November 1996; (4) ''Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products,'' January 2003; and (5) ''Q1E Evaluation of Stability Data,'' June 2004. These guidances can be found on the FDA Guidances (Drugs) Web site under International Conference on Harmonisation—Quality at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm065005.htm*. FDA also recommends that industry follow the ICH outlined definitions, glossaries, references, and attachments.

Although the ICH stability guidances were developed for new drug applications to ensure the stability of new drug substances and products, FDA believes the recommendations provided in the ICH guidances on stability testing also are appropriate for ANDAs. FDA is recommending that applicants follow the ICH stability guidances for all ANDA submissions under section 505(j) of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 355(j)) and relying on drug master files.

This guidance also replaces stability study storage condition recommendations made by the Office of Generic Drugs (OGD) in an August 18, 1995, letter to all ANDA applicants.

That letter stated that OGD would accept ANDAs with the ICH recommended long-term room temperature conditions for stability studies, 25 ± 2° C, 60 ± 5 percent RH.

On September 25, 2012 (77 FR 58999), FDA announced the availability of draft guidance for industry on ''ANDAs: Stability Testing of Drug Substances and Products.'' The public comment period closed on December 24, 2012. We are finalizing the guidance with minor changes and intend to publish a draft guidance to address the public comments in a question-and-answer format in the near future.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on this stability testing for generic drug substances and products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday and will be posted to the docket at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.regulations.gov* or *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: June 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14674 Filed 6–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 the following meeting.

The meeting will be open to the public, 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.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Cardio-metabolic risk and epigenetic differences among children conceives by infertility.

Date: July 1, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To provide concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–14649 Filed 6–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA DBSR DATASETS.

Date: July 11–12, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Alfonso Latoni, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Osteoimmunology.

Date: July 11, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Treatment of Obesity in Older Adults.

Date: July 18, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 14, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–14647 Filed 6–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Mechanisms of HIV-Related Lung Disease: Clinical/Basic Research Centers.

Date: July 10–11, 2013.

Time: 12:30 p.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Mechanisms of HIV-Related Lung Disease: Data Coordinating Center.

Date: July 11, 2013.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI T32 Institutional Diversity Training Grants.

Date: July 11, 2013.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie L Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@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: June 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–14646 Filed 6–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute Of Child Health & Human Development; 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Biomedical Analysis of Human Specimens for Despr.

Date: July 10, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Multiple Data Coordinating Center for Despr.

Date: July 16, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Diet, Obesity, and Weight Change in Pregnancy.

Date: July 18, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; 68–2 Diet, Obesity, and Weight Change in Pregnancy.

Date: July 31, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–14648 Filed 6–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Start-Up Commercial License for the Development of Fenoterol and Fenoterol Analogues for the Treatment of Brain, Liver, and Pancreatic Cancers and Congestive Heart Failure

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant to Mitchell Woods Pharmaceuticals, LLC, of an exclusive commercialization license to practice the inventions embodied in the following U.S. Patent Applications (and all continuing applications and foreign counterparts): Serial No. 61/651,961, filed May 25, 2012, entitled, ''Methods of Regulating Cannabinoid Receptor Activity-related Disorders and Diseases'' [HHS Reference E–139–2012/0–US–1]; Serial No. 61/789,629, filed March 15, 2013, entitled, ''Methods of Regulating Cannabinoid Receptor Activity-related Disorders and Diseases'' [HHS Reference E–139–2012/1–US–1]; Serial No. 61/312,642, filed March 10, 2010, entitled, ''The Use of Fenoterol and Fenoterol Analogues in the Treatment of Glioblastomas and Astrocytomas'' [HHS Reference E–013–2010/0–US–01]; Serial No. 60/837,161, filed August 10, 2006, entitled, ''Preparation of *R,R*-Fenoterol and *R,R*-Fenoterol Analogues and Their Use in Congestive Heart Failure'' [HHS Reference E–205–2006/0–US–1]; and Serial No. 60/927,825, filed May 3, 2007, entitled ''Preparation of *R,R*-Fenoterol and *R,R*-Fenoterol Analogues and Their Use in Congestive Heart Failure'' [HHS Reference E–205–2006/1–US–1]. The patent rights in these inventions have been assigned or exclusively licensed to the Government of the United States of America.

The prospective exclusive commercialization license territory may be worldwide, and the scope may be limited to the following two fields of use:

Licensed Field of Use I: An exclusive license to the Patent Rights for research, development, manufacture, distribution, sale, and use in humans for the treatment of brain cancer, liver cancer, or pancreatic cancer within the Licensed Territory of (*R,R′*)-4′-methoxy-1-napthylfenoterol (MNF), (*R,S′*)-4′-methoxy-1-napthylfenoterol, (*R,R′*)-ethylMNF, (*R,R′*)-napthylfenoterol, (*R,S′*) napthylfenoterol, (*R,R′*)-ethyl-napthylfenoterol, and (*R,R′*)-4′-amino-1-napthylfenoterol, (*R,R′*)-4′-hydroxy-1-napthylfenoterol, (*R,R′*)-4-methoxy-ethylfenoterol, (*R,R′*)-methoxyfenoterol, (*R,R′*)-ethylfenoterol, (*R,R′*)-fenoterol; and their respective stereoisomers.

Licensed Field of Use II: An exclusive license to the Patent Rights for research, development, and manufacture of Licensed Products incorporating the Licensed Patent Rights; and distribution, sale, and use of such Licensed Products in humans for the treatment of congestive heart failure within the Licensed Territory.

DATES: Only written comments or applications for a license (or both) which are received by the NIH Office of Technology Transfer on or before July 5, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: Patrick McCue, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; Email: *mccuepat@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns the use of fenoterol analogues in treatments for tumors expressing a cannabinoid receptor, and in treatments for congestive heart failure.

The prospective exclusive commercialization license is being considered under the small business initiative launched on 1 October 2011, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive commercialization license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive commercialization license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated; June 14, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–14645 Filed 6–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT921000–13–L13200000–EL0000–P; NDM 105349]

Notice of Invitation; Coal Exploration License Application NDM 105349, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are invited to participate with BNI Coal Ltd. on a pro rata cost sharing basis in a program for the exploration of coal deposits owned by the United States of America in lands located in Oliver County, North Dakota, encompassing 480 acres.

DATES: Any party seeking to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and BNI Coal Ltd. as provided in the **ADDRESSES** section below no later than July 22, 2013 or 10 calendar days after the last publication of this Notice in the *Bismarck Tribune* newspaper, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the *Bismarck Tribune,* Bismarck, North Dakota. Such written notice must refer to serial number NDM 105349.

ADDRESSES: The proposed exploration license and plan are available for review from 9 a.m. to 4 p.m., Monday through Friday, in the public room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana.

A written notice to participate in the exploration license should be sent to the State Director, BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101–4669 and BNI Coal, 2360 35th Ave. SW., Center, ND 58530.

FOR FURTHER INFORMATION CONTACT: Anne Allen by telephone at 406–896–5082 or by email at *amallen@blm.gov;* or Kym Dowdle by telephone at 406–896–5046 or by email at *kdowdle@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24

hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and will be conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate.

The lands to be explored for coal deposits in exploration license NDM 105349 are described as follows:

Fifth Principal Meridian, North Dakota

T. 142 N., R. 84 W., Sec. 20, NE¼ and W½.

The area described contains 480 acres.

The Federal coal within the lands described for exploration license NDM 105349 is currently unleased for development of Federal coal reserves.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 2013–14637 Filed 6–19–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–REGS–12057; PPWOVPAU0, PPMPSPD1Y.M0000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Special Park Use Applications

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on June 30, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before July 22, 2013.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 1201 I Street NW., MS 1237, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number 1024–0026 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Lee Dickinson, Special Park Uses National Manager, at *lee_dickinson@nps.gov* (email) or 202–513–7092 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 16 U.S.C. 1 (National Park Service Act Organic Act), we must preserve America's natural wonders unimpaired for future generations, while also making them available for the enjoyment of the visitor. Meeting this mandate requires that we balance preservation with use. Maintaining a good balance requires both information and limits. In accordance with regulations at 36 CFR parts 1–7, 13, 20, and 34, we issue permits for special park uses. Special park uses cover a wide range of activities including, but not limited to, special events, First Amendment activities, grazing and agricultural use, commercial filming, still photography, construction, and vehicle access.

We currently use Forms 10–930 (Application for Special Use Permit), 10–931 (Application for Special Use Permit—Commercial Filming/Still Photography (short form)), and 10–932 (Application for Special Use Permit—Commercial Filming/Still Photography (long form)) to collect information for special use permits. In order to reduce paperwork burden on the public, we are proposing two additional forms, which will require less information than the existing forms:

- Form 10–930s (Application for Special Use Permit (short form)). The short form will reduce the burden on applicants for smaller, less complicated activities, such as small picnics, gatherings, weddings, etc.
- Form 10–933 (Application for Special Use Permit—Vehicle/Watercraft Use). This new form applies specifically to vehicle access, such as off-road, over sand, or commercial vehicle access. We will only request information specific to the activity, eliminating unneeded information.

The information we collect in the special use applications allows park managers to determine if the requested use is consistent with the laws and NPS regulations referenced above and with the public interest. The park manager must also determine that the requested activity will not cause unacceptable impacts to park resources and values.

II. Data

OMB Control Number: 1024–0026.

Title: Special Park Use Applications (portions of 36 CFR 1—7, 13, 20, and 34).

Form Numbers: 10–930, 10–930s, 10–931, 10–932, and 10–933.

Type of Request: Revision of a currently approved collection of information.

Description of Respondents: Individuals or households; not-for-profit entities; businesses or other for-profit entities; and Federal, State, local and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (in hours)	Estimated total annual burden hours
10–930	9,500	9,500	.5 hour	4,750
10–930s	5,200	5,200	.25	1,300
10–931	2,655	2,655	.25	664
10–932	760	760	.5	380

Activity	Number of respondents	Number of responses	Completion time per response (in hours)	Estimated total annual burden hours
10–933	20,350	20,350	.25	5,088
Totals	38,465	38,465		12,182

Estimated Annual Nonhour Burden Cost: $2,884,875 for application fees.

III. Comments

On January 7, 2013, we published in the **Federal Register** (78 FR 957) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on March 8, 2013. We received one comment. The commenter did not address the information collection requirements.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 14, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–14695 Filed 6–19–13; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1207–1209 (Preliminary)]

Prestressed Concrete Steel Rail Tie Wire From China, Mexico, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 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, Mexico, and Thailand of prestressed concrete steel rail tie wire, provided for in subheading 7217.10.80 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).

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 section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these 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 April 23, 2013, a petition was filed with the Commission and Commerce by Davis Wire Corp. of Kent, WA and Insteel Wire Product Co. of Mount Airy, NC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of prestressed concrete steel rail tie wire from China, Mexico, and Thailand. Accordingly, effective April 23, 2013, the Commission instituted antidumping duty investigation Nos. 731–TA–1207–1209 (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 April 30, 2013 (78 FR 25303). The conference was held in Washington, DC, on May 14, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission filed its determinations on the agency's electronic document information system (EDIS) on June 14, 2013. The views of the Commission are contained in USITC Publication 4397 (June 2013), entitled *Prestressed Concrete Steel Rail Tie Wire from China, Mexico, and Thailand: Investigation Nos. 731–TA–1207–1209 (Preliminary).*

By order of the Commission.

Issued: June 14, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–14680 Filed 6–19–13; 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)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–015]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 28, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1210–1212 (Preliminary) (Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and Vietnam). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before July 1, 2013; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before July 9, 2013.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 18, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–14807 Filed 6–18–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–365]

Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2013

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice proposes to adjust the 2013 aggregate production quotas for several controlled substances in schedules I and II of the Controlled Substances Act (CSA) and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, as well as to establish the 2013 aggregate production quotas for three recently temporarily scheduled substances.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before July 22, 2013. The electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–365'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at *http://www.regulations.gov* for easy reference. Paper comments that duplicate the electronic submission are not necessary and are strongly discouraged as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

All comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine. This responsibility has been delegated to the Administrator of the DEA through 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104. DEA published the 2013 established aggregate production quotas for controlled substances in schedules I and II and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine in the **Federal Register** (77 FR 59980) on October 1, 2012. That notice stipulated that, as provided for in 21 CFR 1303.13 and 21 CFR 1315.13, all aggregate production quotas and assessments of annual need are subject to adjustment.

Analysis for Proposed Aggregate Production Quotas for Temporarily Scheduled Substances

On May 16, 2013, the Deputy Administrator issued a final order to temporarily schedule three synthetic cannabinoids in schedule I of the CSA: (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone

(UR–144); [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (XLR11); and N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (AKB48). See 78 FR 28735. DEA has received applications for registration and quota for these temporarily scheduled substances. In examining the information provided by the applicants, along with other information, DEA finds that there is a current need for these substances. Aggregate production quotas represent those quantities of schedule I and II controlled substances to be manufactured in the United States in 2013 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. As such, pursuant to 21 U.S.C. 826(a), the Deputy Administrator must determine the total quantity and establish production quotas for each of the three temporarily scheduled substances.

In making this determination, the Deputy Administrator has taken into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826(a) and 21 CFR 1303.11. DEA proposes the aggregate production quotas for these three temporarily scheduled substances by considering: (1) Total estimated net disposal of each substance by all manufacturers; (2) estimated trends in the national rate of net disposal; (3) total estimated inventories of the basic class and of all substances manufactured from the class; (4) projected demand for each class as indicated by procurement quotas requested pursuant to 21 CFR 1303.12; and (5) other factors affecting medical, scientific, research, and industrial needs of the United States and lawful export requirements, as the Deputy Administrator finds relevant. These quotas do not include imports of controlled substances for use in industrial processes.

Analysis for Proposed Revised 2013 Aggregate Production Quotas and Assessment of Annual Needs

DEA proposes to adjust the established 2013 aggregate production quotas for some schedule I and II controlled substances to be manufactured in the United States in 2013 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes. DEA is not proposing to adjust the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine at this time.

In proposing the adjustment, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 CFR 1303.13 and 21 CFR 1315.13. DEA determines whether to propose an adjustment of the aggregate production quotas for basic classes of schedule I and II controlled substances and ephedrine, pseudoephedrine, and phenylpropanolamine by considering: (1) Changes in demand for the basic class, changes in the national rate of net disposal for the class, and changes in the rate of net disposal by the registrants holding individual manufacturing quotas for the class; (2) whether any increased demand or changes in the national or individual rates of net disposal are temporary, short term, or long term; (3) whether any increased demand can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the aggregate production quota; (4) whether any decreased demand will result in excessive inventory accumulation by all persons registered to handle the class; and (5) other factors affecting the medical, scientific, research, and industrial needs of the United States and lawful export requirements, as the Deputy Administrator finds relevant.

DEA also considered updated information obtained from 2012 year-end inventories, 2012 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information made available to DEA after the initial aggregate production quotas and assessment of annual needs had been established. Other factors DEA considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the proposed revised 2013 assessment of annual needs, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407, respectively).

As described in the previously published notice establishing the 2013 aggregate production quotas and assessment of annual needs, DEA has specifically considered that inventory allowances granted to individual manufacturers may not always result in the availability of sufficient quantities to maintain an adequate reserve stock pursuant to 21 U.S.C. 826(a), as intended. See 21 CFR 1303.24. This would be concerning if a natural disaster or other unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need. As such, DEA has included in all proposed revised schedule II aggregate production quotas, and certain schedule I aggregate production quotas, an additional 25% of the estimated medical, scientific, and research needs as part of the amount necessary to ensure the establishment and maintenance of reserve stocks. The resulting revised established aggregate production quota will reflect these included amounts. This action will not affect the ability of manufacturers to maintain inventory allowances as specified by regulation. DEA expects that maintaining this reserve in certain established aggregate production quotas will mitigate adverse public effects if an unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need, as determined by DEA. DEA does not anticipate utilizing the reserve in the absence of these circumstances.

The Deputy Administrator, therefore, proposes that the year 2013 aggregate production quotas for the three temporarily scheduled substances be established, and to adjust the 2013 aggregate production quotas for some schedule I and II controlled substances and ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Previously established 2013 quotas	Proposed or proposed adjusted 2013 quotas
Temporarily Scheduled Substances		
(1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144)	N/A	15 g.
[1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (XLR11)	N/A	15 g.
N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (AKB48)	N/A	15 g.
Schedule I		
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	45 g	No change.
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	45 g	No change.
1-[1-(2-Thienyl)cyclohexyl]piperidine	5 g	No change.
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)	45 g	No change.
1-Butyl-3-(1-naphthoyl)indole (JWH–073)	45 g	No change.
1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8)	45 g	No change.
1-Hexyl-3-(1-naphthoyl)indole (JWH–019)	45 g	No change.
1-Methyl-4-phenyl-4-propionoxypiperidine	2 g	No change.
1-Pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678)	45 g	No change.
1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH–203)	45 g	No change.
1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250)	45 g	No change.
1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398)	45 g	No change.
1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122)	45 g	No change.
1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19, RCS–4)	45 g	No change.
1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081)	45 g	No change.
2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P)	15 g	No change.
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)	15 g	No change.
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)	15 g	No change.
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)	15 g	No change.
2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)	15 g	No change.
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)	15 g	No change.
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)	15 g	No change.
2,5-Dimethoxy-4-ethylamphetamine (DOET)	12 g	No change.
2,5-Dimethoxy-4-n-propylthiophenethylamine	12 g	No change.
2,5-Dimethoxyamphetamine	12 g	No change.
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)	15 g	No change.
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)	15 g	No change.
3,4,5-Trimethoxyamphetamine	12 g	No change.
3,4-Methylenedioxyamphetamine (MDA)	30 g	No change.
3,4-Methylenedioxymethamphetamine (MDMA)	35 g	50 g.
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	24 g	No change.
3,4-Methylenedioxy-N-methylcathinone (methylone)	35 g	No change.
3,4-Methylenedioxypyrovalerone (MDPV)	25 g	No change.
3-Methylfentanyl	2 g	No change.
3-Methylthiofentanyl	2 g	No change.
4-Bromo-2,5-dimethoxyamphetamine (DOB)	12 g	No change.
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	12 g	No change.
4-Methoxyamphetamine	88 g	No change.
4-Methyl-2,5-dimethoxyamphetamine (DOM)	12 g	25 g.
4-Methylaminorex	12 g	No change.
4-Methyl-N-methylcathinone (mephedrone)	25 g	No change.
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	68 g	No change.
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47, 497 C8-homolog).	53 g	No change.
5-Methoxy-3,4-methylenedioxyamphetamine	12 g	No change.
5-Methoxy-N,N-diisopropyltryptamine	12 g	No change.
5-Methoxy-N,N-dimethyltryptamine	10 g	No change.
Acetyl-alpha-methylfentanyl	2 g	No change.
Acetyldihydrocodeine	2 g	No change.
Acetylmethadol	2 g	No change.
Allylprodine	2 g	No change.
Alphacetylmethadol	2 g	No change.
Alpha-ethyltryptamine	12 g	No change.
Alphameprodine	2 g	No change.
Alphamethadol	2 g	No change.
Alpha-methylfentanyl	2 g	No change.
Alpha-methylthiofentanyl	2 g	No change.
Alpha-methyltryptamine (AMT)	12 g	No change.
Aminorex	12 g	No change.
Benzylmorphine	2 g	No change.
Betacetylmethadol	2 g	No change.
Beta-hydroxy-3-methylfentanyl	2 g	No change.
Beta-hydroxyfentanyl	2 g	No change.

Basic class	Previously established 2013 quotas	Proposed or proposed adjusted 2013 quotas
Betameprodine	2 g	No change.
Betamethadol	2 g	No change.
Betaprodine	2 g	No change.
Bufotenine	3 g	No change.
Cathinone	12 g	No change.
Codeine-N-oxide	602 g	No change.
Desomorphine	5 g	No change.
Diethyltryptamine	12 g	No change.
Difenoxin	50 g	No change.
Dihydromorphine	3,300,000 g	No change.
Dimethyltryptamine	18 g	No change.
Gamma-hydroxybutyric acid	46,250,000 g	No change.
Heroin	25 g	No change.
Hydromorphinol	54 g	No change.
Hydroxypethidine	2 g	No change.
Ibogaine	5 g	No change.
Lysergic acid diethylamide (LSD)	30 g	No change.
Marihuana	21,000 g	No change.
Mescaline	13 g	No change.
Methaqualone	10 g	No change.
Methcathinone	14 g	No change.
Methyldihydromorphine	2 g	No change.
Morphine-N-oxide	655 g	No change.
N,N-Dimethylamphetamine	12 g	No change.
N-Benzylpiperazine	15 g	No change.
N-Ethylamphetamine	12 g	No change.
N-Hydroxy-3,4-methylenedioxyamphetamine	12 g	No change.
Noracymethadol	2 g	No change.
Norlevorphanol	52 g	No change.
Normethadone	2 g	No change.
Normorphine	18 g	No change.
Para-fluorofentanyl	2 g	No change.
Phenomorphan	2 g	No change.
Pholcodine	2 g	No change.
Properidine	2 g	No change.
Psilocybin	2 g	10 g.
Psilocyn	4 g	No change.
Tetrahydrocannabinols	491,000 g	No change.
Thiofentanyl	2 g	No change.
Tilidine	10 g	No change.
Trimeperidine	2 g	No change.
Schedule II		
1-Phenylcyclohexylamine	3 g	No change.
1-Piperdinocyclohexanecarbonitrile	21 g	No change.
4-Anilino-N-phenethyl-4-piperidine (ANPP)	2,250,000 g	No change.
Alfentanil	38,250 g	No change.
Alphaprodine	3 g	No change.
Amobarbital	9 g	No change.
Amphetamine (for conversion)	22,875,000 g	No change.
Amphetamine (for sale)	42,625,000 g	47,186,000 g.
Carfentanil	6 g	No change.
Cocaine	240,000 g	No change.
Codeine (for conversion)	81,250,000 g	No change.
Codeine (for sale)	49,506,250 g	No change.
Dextropropoxyphene	19 g	No change.
Dihydrocodeine	250,000 g	No change.
Diphenoxylate	750,000 g	No change.
Ecgonine	127,500 g	144,000 g.
Ethylmorphine	3 g	No change.
Fentanyl	2,108,750 g	No change.
Glutethimide	3 g	No change.
Hydrocodone (for sale)	99,625,000 g	No change.
Hydromorphone	5,968,750 g	No change.
Isomethadone	5 g	No change.
Levo-alphacetylmethadol (LAAM)	4 g	No change.
Levomethorphan	6 g	No change.
Levorphanol	4,500 g	No change.
Lisdexamfetamine	21,000,000 g	No change.
Meperidine	6,875,000 g	No change.

Basic class	Previously established 2013 quotas	Proposed or proposed adjusted 2013 quotas
Meperidine Intermediate—A	6 g	No change.
Meperidine Intermediate—B	11 g	No change.
Meperidine Intermediate—C	6 g	No change.
Metazocine	6 g	No change.
Methadone (for sale)	25,000,000 g	33,125,000 g.
Methadone Intermediate	32,500,000 g	40,500,000 g.
Methamphetamine	3,912,500 g	No change.
[987,500 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,863,750 grams for methamphetamine mostly for conversion to a schedule III product; and 61,250 grams for methamphetamine (for sale)]		
Methylphenidate	80,750,000 g	96,750,000 g.
Morphine (for conversion)	103,750,000 g	91,250,000 g.
Morphine (for sale)	60,250,000 g	No change.
Nabilone	25,628 g	No change.
Noroxymorphone (for conversion)	9,000,000 g	No change.
Noroxymorphone (for sale)	508,750 g	1,262,500 g.
Opium (powder)	91,250 g	No change.
Opium (tincture)	1,287,500 g	No change.
Oripavine	22,750,000 g	No change.
Oxycodone (for conversion)	10,250,000 g	No change.
Oxycodone (for sale)	131,500,000 g	153,750,000 g.
Oxymorphone (for conversion)	18,375,000 g	No change.
Oxymorphone (for sale)	6,875,000 g	No change.
Pentobarbital	42,500,000 g	No change.
Phenazocine	6 g	No change.
Phencyclidine	30 g	No change.
Phenmetrazine	3 g	No change.
Phenylacetone	20,000,000 g	29,628,750 g.
Racemethorphan	3 g	No change.
Remifentanil	3,750 g	No change.
Secobarbital	215,003 g	No change.
Sufentanil	6,255 g	No change.
Tapentadol	13,750,000 g	No change.
Thebaine	145,000,000 g	No change.
List I Chemicals		
Ephedrine (for conversion)	15,100,000 g	No change.
Ephedrine (for sale)	3,500,000 g	No change.
Phenylpropanolamine (for conversion)	25,700,000 g	No change.
Phenylpropanolamine (for sale)	6,100,000 g	No change.
Pseudoephedrine (for sale)	225,000,000 g	No change.

The Deputy Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. Pursuant to 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Deputy Administrator may adjust the 2013 aggregate production quotas and assessment of annual needs as needed.

Comments

Pursuant to 21 CFR 1303.11 and 21 CFR 1315.11, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Deputy Administrator may hold a public hearing on one or more issues raised. In the event the Deputy Administrator decides in his sole discretion to hold such a hearing, the Deputy Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Deputy Administrator will publish in the **Federal Register** a Final Order establishing any adjustment of 2013 aggregate production quota for each basic class of controlled substance and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

Dated: June 14, 2013.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2013–14723 Filed 6–19–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Noramco, Inc. (GA)

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 21, 2012, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Opium tincture (9630), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance,

may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administrator, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 19, 2013.

Dated: June 7, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–14458 Filed 6–19–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1624]

Draft Report and Recommendations Prepared by the Research Committee of the Scientific Working Group on Medicolegal Death Investigation

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Medicolegal Death Investigation will make available to the general public a document entitled, ''Research in Forensic Pathology/Medicolegal Death Investigation''. The opportunity to provide comments on this document is open to coroner/medical examiner office representatives, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following Web site: *http://www.swgmdi.org.*

DATES: Comments must be received on or before July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [Note: this is not a toll-free telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

Greg Ridgeway,

Acting Director, National Institute of Justice.

[FR Doc. 2013–14707 Filed 6–19–13; 8:45 am]

BILLING CODE 4410–18–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Public Comments: Interagency Review of Exclusion Order Enforcement Process

AGENCY: Office of the U.S. Intellectual Property Enforcement Coordinator, Executive Office of the President, OMB.

ACTION: Request for written submissions from the public.

SUMMARY: The Executive Office of the President, through the U.S. Intellectual Property Enforcement Coordinator (''IPEC''), is beginning an interagency review directed at strengthening the procedures and practices used during enforcement of exclusion orders issued by the U.S. International Trade Commission (''ITC''). The interagency working group will review existing procedures that U.S. Customs and Border Protection (''CBP'') and the ITC use to evaluate the scope of exclusion orders and work to ensure the process and criteria utilized during exclusion order enforcement activities are transparent, effective, and efficient. Through this request for public comment, IPEC invites public input and recommendations in support of the Administration's interagency review of exclusion order enforcement processes called for by the 2013 Joint Strategic Plan on Intellectual Property Enforcement [and the White House Task Force on High-Tech Patents].

DATES: Submissions must be received on or before July 21, 2013, at 11:59 p.m.

ADDRESSES: All submissions should be electronically submitted to *http://www.regulations.gov.* If you are unable to provide submissions to regulations.gov, you may contact the Office of the U.S. Intellectual Property Enforcement Coordinator at *intellectualproperty@omb.eop.gov* using the subject line ''IPEC Review of Exclusion Order Enforcement Processes'' or (202) 395–1808 to arrange for an alternate method of transmission. The regulations.gov Web site is a Federal E-Government Web site that allows the public to find, review and submit comments on documents that have published in the **Federal Register** and that are open for comment. Submissions filed via the regulations.gov Web site will be available to the public for review and inspection. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary business information.

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Intellectual Property Enforcement Coordinator, at *intellectualproperty@omb.eop.gov* or (202) 395–1808.

SUPPLEMENTARY INFORMATION: Under Section 337 of the Tariff Act of 1930, the ITC investigates allegations regarding unfair practices in import trade, including allegations related to intellectual property infringement, as well as other forms of unfair competition. Once the ITC finds a violation of Section 337 and issues an exclusion order barring the importation of infringing goods, CBP and the ITC are responsible for determining whether imported articles fall within the scope of the exclusion order. Because of these shared responsibilities, it is critical that the ITC and CBP have clear communication on what the order means to improve the order's enforcement and prevent importation of infringing product. This determination can often be challenging, particularly in cases in which a technologically sophisticated product may have been redesigned so as to no longer fall within the scope of the existing exclusion order.

IPEC will chair a new interagency effort directed at strengthening the processes that CBP uses with regard to enforcement of ITC exclusion orders pertaining to intellectual property. The working group will be comprised of representatives from the ITC; DHS, DOC, Treasury, and DOJ; offices within the Executive Office of the President including USTR, OSTP, NEC; and other relevant agencies as necessary.

The interagency working group will review existing procedures that CBP and the ITC use to evaluate the scope of ITC exclusion orders and work to ensure the process and standards utilized during exclusion order enforcement activities are transparent, effective, and efficient. Among others, one focus of the interagency review will be on ensuring that CBP uses transparent and accurate procedures for determining whether an article is covered by the ITC exclusion order. Further, the working group will evaluate opportunities to improve the effectiveness of directions provided by the ITC to assist CBP with the challenges of enforcement.

Important to the development of the Administration's exclusion order enforcement recommendations, is ensuring that any approaches that are considered to be particularly effective as well as any concerns with the present approach to exclusion order enforcement are understood by policymakers. As such, IPEC is seeking public input and recommendations through the questions set out below for

improvements to the process and criteria utilized during exclusion order enforcement activities. Recommendations should include, but need not be limited to: Changes to agency policies, practices or methods, guidance and regulation.

Within six months of the issuance of the Administration's 2013 Joint Strategic Plan on Intellectual Property Enforcement, the interagency working group will prepare recommendations.

Questions

1. Please describe your, positive or negative, experience with the exclusion order enforcement processes.

2. Are the procedures, criteria, and regulations utilized by CBP when enforcing exclusion orders clear, accessible, and understood?

a. Please provide recommendations for enhancements to procedures, criteria, and regulations used during enforcement of exclusion orders?

3. Are the procedures and criteria used by CBP to evaluate the scope of an exclusion order effective and clearly understood?

a. If not, please provide a description of the problem experienced?

b. What improvements could be made to the procedures and criteria used by CBP when evaluating the scope of an exclusion order to assist with the determining whether an import is covered by the claims of the infringing patent?

c. Under CBP's current ruling request process, 19 CFR part 177, an importer may seek a prospective ruling on whether a redesigned or new product falls within the scope of an exclusion order. Determinations of this kind are often initiated at the request of the importer (typically the product manufacturer) and are conducted through *ex parte* proceeding. Would development of an *inter partes* proceeding involving relevant parties to the ITC investigation enhance the efficiency, transparency and efficacy of the exclusion order enforcement process with respect to determining the scope of the exclusion order?

4. Are the processes used by CBP timely and effective in notifying interested parties, for example, ITC litigants, importers and the general public, of determinations made regarding the scope of an exclusion order and, in turn, applicability to the imported product?

5. What further procedural changes or collaborative steps could be undertaken between the ITC and CBP to improve the efficacy of exclusion order enforcement efforts?

6. Do exclusion orders currently provide sufficient level of detail and direction necessary to assist CBP with the challenges of enforcement?

7. Please identify any additional areas of consideration regarding improvements that could be undertaken by CBP or the ITC to further improve upon the exclusion order enforcement processes?

Victoria A. Espinel,

United States Intellectual Property Enforcement Coordinator, Executive Office of the President .

[FR Doc. 2013–14743 Filed 6–19–13; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Proposed Information Collection Requests: Public Libraries Survey, FY 2014–2016

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Service (''IMLS'') as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the continuance of the Public Libraries Survey for Fiscal Years 2014–2016.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 20, 2013.

IMLS is particularly interested in comments that help the agency to:

- 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 submissions of responses.

ADDRESSES: For a copy of the documents contact: Deanne W. Swan, Senior Statistician, Office of Planning, Research, and Evaluation, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington DC 20036. Dr. Swan can be reached by *Telephone:* 202–653–4769, *Fax:* 202–653–4601, or by email at *dswan@imls.gov* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

II. Current Actions

Pursuant to Public Law 107–279, this Public Libraries Survey collects annual descriptive data on the universe of public libraries in the U.S. and the Outlying Areas. Information such as

public service hours per year, circulation of library books, number of librarians, population of legal service area, expenditures for library collection, programs for children and young adults, staff salary data, and access to technology, etc., would be collected. The Public Libraries Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0074, which expires December 31, 2013.

Agency: Institute of Museum and Library Services.

Title: Public Libraries Survey, 2014–2016.

OMB Number: 3137–0074.

Agency Number: 3137.

Affected Public: State and local governments, State library agencies, and public libraries.

Number of Respondents: 55.

Note: 55 is the number of State Library Administrative Agencies (SLAAs) that are responsible for the collection of this information and for reporting it to IMLS. In gathering this information, the SLAAs will request that their sub-entities (i.e., public libraries in their respective States and Outlying Areas) provide information to the respective SLAA. As the number of sub-entities and questions varies from SLAA to SLAA, it is difficult to assess the exact number of burden hours and costs.

Frequency: Annually.

Burden hours per respondent: 80.3

Total burden hours: 4254.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: $116,929.

CONTACT: Kim A. Miller, Management Analyst, Office of Planning, Research, and Evaluation, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Ms. Miller can be reached by *Telephone:* 202–653–4762, *Fax:* 202–653–4762, or by email at *kmiller@imls.gov.*

Dated: June 17, 2013.

Kim A. Miller,

Management Analyst, Office of Planning, Research, and Evaluation.

[FR Doc. 2013–14744 Filed 6–19–13; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Ocean Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Proposal Review Panel for Ocean Sciences (#10752).

Date & Time: July 10, 2013—10:00 a.m.–7:00 p.m. July 11, 2013—8:00 a.m.–6:30 p.m. July 12, 2013—8:00 a.m.–6:30 p.m.

Place: The University of California's Gump Laboratory, Moorea, French Ploynesia.

Type of Meeting: Partially Closed.

Contact Person: David L. Garrison, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 292–8583.

Purpose of Meeting: Formal fourth year review of the Moorea Coral Reef Long-Term Ecological Research Project.

Agenda

Wednesday, July 10, 2013

10:00 a.m.–2:00 p.m.—Information Technology meeting (closed).

2:00 p.m.–3:00 p.m.—Welcome by the Gump station director (open).

3:00 p.m.–7:00 p.m.—NSF meeting with Mid Term Review Panel (closed).

Thursday, July 11, 2013

8:00 a.m.–12:00 n—Field Trip 1 (closed).

1:00 p.m.–4:30 p.m.—Research Presentations (open).

4:30 p.m.–5:30 p.m.—Demonstrations—Moorea Coral Reef (MCR) dry lab and wet lab (closed).

5:30 p.m.–6:30 p.m.—Graduate student/Post doc poster session (open).

Friday, July 12, 2013

8:00 a.m.–10:00 a.m.—Field Trip 2 (closed).

10:00 a.m.–12:00 n—Site presentations (open).

- Information Management
- Outreach, Education & Training
- Cross-site and International Activities
- Project Management

1:00 p.m.–5:30 p.m.—Mid Term Review panel report (closed).

5:30 p.m.–6:30 p.m.—Report to MCR (closed).

Reason for Closing: During closed sessions the review will include information of a confidential nature, including technical and financial information. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: June 14, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–14677 Filed 6–19–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Task Force on Administrative Burdens, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, July 8, 2013, 5:00 p.m.–6:00 p.m. e.d.t.

SUBJECT MATTER: A discussion of the results of the Task Force's Request for Information and an update on recent activities.

STATUS: Open.

LOCATION: This meeting will be held by teleconference. A public listening line will be available. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is Lisa Nichols or John Veysey.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–14902 Filed 6–18–13; 4:15 pm]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: We Need Important Information About Your Eligibility for Social Security Disability Benefits, RI 98–7

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0216, We Need Important Information About Your Eligibility for Social Security Disability Benefits, RI 98–7. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions

of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM'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.

DATES: Comments are encouraged and will be accepted until August 19, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, Union Square 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Retirement Services Publications Team, 1900 E Street NW., Room 4445, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 98–7 is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need Important Information About Your Eligibility for Social Security Disability Benefits.

OMB Number: 3206–0216.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 4,300.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 358.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–14772 Filed 6–19–13; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM Form 1203–FX, Occupational Questionnaire

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Automated Systems Management Branch, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0040, Occupational Questionnaire, OPM Form 1203–FX. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM'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.

DATES: Comments are encouraged and will be accepted until August 19, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on this ICR to the Automated Systems Management Branch, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Rachel Cooper or sent via electronic mail to *rachel.cooper@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Automated Systems Management Branch, Office of Personnel Management, 1900 E Street NW., Washington, DC 20503, Attention: Rachel Cooper or sent via electronic mail to *rachel.cooper@opm.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Questionnaire is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create applicant records for an automated examining system. The 1203 series was commonly referred to as the ''Qualifications and Availability Form C.'' OPM has re-titled the series as ''Occupational Questionnaire'' to fit a more generic need. OPM uses this form to carry out its responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, of title 5, United States Code. One change has been made to the form under *Section 14, Veterans' Preference.* The addition of *Sole Survivorship Preference* was added to reflect the amended eligibility categories for veterans' preference per Public Law 110–317, the Hubbard Act. Subparagraph (H) established the new category for veterans released or discharged from a period of active duty from the armed forces, after August 28, 2008, by reason of a ''sole survivorship discharge.''

Analysis

Agency: Automated Systems Management Branch, Office of Personnel Management.

Title: Occupational Questionnaire, OPM Form 1203–FX.

OMB Number: 3260–0040.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 10,286,701.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 7,715,026.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–14771 Filed 6–19–13; 8:45 am]

BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

January 2013 Pay Schedules

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The President has signed an Executive Order containing the 2013 pay schedules for certain Federal civilian employees. The rates of pay for these employees will not be increased in 2013 and remain at 2010 levels. This notice serves as documentation for the public record.

FOR FURTHER INFORMATION CONTACT: Tameka Gillis, Pay and Leave, Employee Services, U.S. Office of Personnel Management; (202) 606–2858; FAX (202) 606–0824; or email to *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2013, the President signed Executive Order 13641 (78 FR 21503), which documented the January 2013 pay schedules. Pursuant to Public Law 111–322 (December 22, 2010), as extended by Public Law 113–6 (April 5, 2013), the Executive Order provides that the 2013 pay rates for civilian employee pay schedules covered by the order are not adjusted and remain at 2010 levels.

Schedule 1 of Executive Order 13641 provides the rates for the 2013 General Schedule (GS) and reflects no increase from 2010. Executive Order 13641 also includes the percentage amounts of the 2013 locality payments, which remain at 2010 levels except for employees in nonforeign areas where rates remain at 2012 levels. (See Section 5 and Schedule 9 of Executive Order 13641.)

The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13641 that the U.S. Office of Personnel Management (OPM) publish appropriate notice of the 2013 locality payments in the **Federal Register.**

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the United States (as defined in 5 U.S.C. 5921(4)) and its territories and possessions. In 2013, locality payments ranging from 14.16 percent to 35.15 percent apply to GS employees in the 34 locality pay areas. The 2013 locality pay area definitions can be found at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/locality-pay-area-definitions/.*

The 2013 locality pay percentages became effective on the first day of the first pay period beginning on or after January 1, 2013 (January 13, 2013). An employee's locality rate of pay is computed by increasing his or her scheduled annual rate of pay (as defined in 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.609.) As provided under the Nonforeign Area Retirement Equity Assurance Act of 2009 (subtitle B of title XIX of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009)), the locality rate for each nonforeign area was set at the full applicable locality rate in January 2012. Employees in nonforeign areas entitled to cost-of-living allowances (COLAs) (i.e., Alaska, Hawaii, and other nonforeign areas as defined in 5 CFR 591.207) had corresponding reductions in their COLAs when locality rates increased.

Executive Order 13641 documents that the Executive Schedule rates of pay remain at the 2010 levels. By law, Executive Schedule officials are not authorized to receive locality payments.

Executive Order 13641 documents the 2013 range of rates of basic pay for members of the Senior Executive Service (SES) under 5 U.S.C. 5382. The minimum rate of basic pay for the SES remains at $119,554 in 2013. The maximum rate of the SES rate range continues to be $179,700 (level II of the Executive Schedule) for SES members covered by a certified SES performance appraisal system and $165,300 (level III of the Executive Schedule) for SES members covered by an SES performance appraisal system that has not been certified.

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range remains at $119,554 in 2013. The applicable maximum rate of the SL/ST rate range continues to be $179,700 (level II of the Executive Schedule) for SL or ST employees covered by a certified SL/ST performance appraisal system and $165,300 (level III of the Executive Schedule) for SL or ST employees covered by an SL/ST performance appraisal system that has not been certified. Agencies with certified performance appraisal systems in 2013 for SES members and employees in SL and ST positions also must apply a higher aggregate limitation on pay—up to the Vice President's salary ($230,700 in 2013, the same level as in 2010).

Executive Order 13641 provides that the rates of basic pay for administrative law judges (ALJs) under 5 U.S.C. 5372 are not increased in 2013. The rate of basic pay for AL–1 remains at $155,500 (equivalent to the rate for level IV of the Executive Schedule). The rate of basic pay for AL–2 remains at $151,800. The rates of basic pay for AL–3/A through 3/F continue to range from $103,900 to $143,700.

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, these rates of basic pay are not increased in 2013.

On November 30, 2012, the Director of OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget (OMB) and OPM) that continues GS locality payments for ALJs and certain other non-GS employee categories in 2013. By law, officials paid under the Executive Schedule, SES members, employees in SL/ST positions, and employees in certain other equivalent pay systems are not authorized to receive locality payments. (**Note:** An exception applies to certain grandfathered SES, SL, and ST employees stationed in a nonforeign area on January 2, 2010.) The locality payments continued for non-GS employees have not been increased in 2013. The memo is available at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/continuationlocalitypayments.pdf.*

On April 5, 2013, OPM issued a memorandum (CPM 2013–05) on the continued freeze on pay adjustments for Federal civilian employees. (See *http://www.chcoc.gov/transmittals/Transmittal Details.aspx?TransmittalID=5396.*) The memorandum provided guidance to assist agencies in implementing the pay freeze extension. The ''2013 Salary Tables'' posted on OPM's Web site at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/* are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–14768 Filed 6–19–13; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–67; Order No. 1749]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice

SUMMARY: The Commission is noticing a recently filed Postal Service request to add an additional negotiated service agreement with the Global Expedited Package Services (GEPS 3) product. This

notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 21, 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:

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I. Introduction
II. Background
III. Contents of Filing
IV. Commission Action

I. Introduction

On June 13, 2013, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement (Agreement).[1] The Postal Service seeks inclusion of the Agreement within the GEPS 3 product. Notice at 2.

II. Background

The Commission approved the addition of GEPS to the competitive product list as a result of consideration of Governors' Decision No. 08–7 in Docket No. CP2008–5.[2] The Commission later added GEPS 3 to the competitive product list, and authorized the agreement filed in Docket No. CP2010–71 to serve as the baseline agreement for purposes of considering the potential functional equivalence of other agreements.[3]

The instant Agreement is the successor to the agreement approved in Docket No. CP2012–30, and is with the same customer. *Id.* at 3. The Agreement is intended to take effect July 1, 2013, following the June 30, 2013 expiration of the current agreement.[4] *Id.* It is set to expire 1 year after its effective date. *Id.*

III. Contents of Filing

The Notice includes the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7, which establishes prices and classifications for Global Expedited Package Services Contracts; and
- Attachment 4—an application for non-public treatment of materials to be filed under seal.

Materials filed under seal include unredacted copies of the Agreement, the certified statement, and supporting financial workpapers. *Id.* The Postal Service filed redacted versions of the financial workpapers as public Excel files.

The Notice addresses reasons why the Postal Service believes the Agreement is functionally equivalent to the GEPS 3 baseline agreement, notwithstanding differences in two of the introductory (''Whereas'') paragraphs of the Agreement; revisions to existing articles; and new, deleted, and renumbered articles. *Id.* at 3–7. The Notice also identifies the addition of an Annex 2. *Id.* at 6. The Postal Service states that these differences do not affect either the fundamental service being offered under the Agreement or its fundamental structure. *Id.* at 7.

The Postal Service states that for the reasons discussed in the Notice and as demonstrated by the financial data filed under seal, it has established that the Agreement is in compliance with the requirements of 39 U.S.C. 3633 and that the Agreement is functionally equivalent to Docket No. CP2010–71. *Id.* The Postal Service therefore asks that the Commission add the Agreement to the GEPS 3 product. *Id.*

III. Commission Action

The Commission establishes Docket No. CP2013–67 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Agreement is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than June 21, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information on how to obtain access to non-public material is appears at 39 CFR part 3007.

The Commission appoints Curtis E. Kidd to serve as Public Representative in Docket No. CP2013–67.

It is ordered:

1. The Commission establishes Docket No. CP2013–67 for consideration of matters raised in the Postal Service's Notice.
2. Comments by interested persons in these proceedings are due no later than June 21, 2013.
3. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in Docket No. CP2013–67.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–14681 Filed 6–19–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 13, 2013 (Notice).

[2] *See* Docket No. CP2008–5, Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

[3] *See* Docket Nos. MC2010–28 and CP2010–71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

[4] The Commission recently granted a brief extension of the Docket No. CP2012–30 agreement (from June 10, 2013 to June 30, 2013). The extension was based on the understanding a successor agreement would be filed. *See* Docket No. CP2012–30, Order No. 1731, Order Granting Motion for Temporary Relief, May 24, 2013.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c3–1, SEC File No. 270–197, OMB Control No. 3235–0200.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c3–1 requires brokers-dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates the monitoring of the financial condition of broker-dealers by the Commission and the various self-regulatory organizations. It is estimated that broker-dealer respondents registered with the Commission and subject to the collection of information requirements of Rule 15c3–1 incur an aggregate annual burden of 58,926 hours

to comply with this rule and an aggregate annual external cost of $160,000.

Rule 15c3–1 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 17, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14719 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69767; File No. SR–OCC–2013–802]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing To Change the Expiration Date For Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday

June 14, 2013.

I. Introduction

On April 17, 2013, The Options Clearing Corporation (''OCC'') [1] filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2013–802 pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[2] entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Title VIII'' or ''Clearing Supervision Act'').[3] The advance notice was published in the **Federal Register** on May 23, 2013.[4] The Commission received one comment letter to the Advance Notice, in which the commenter expressed support for the change.[5] This publication serves as a notice of no objection to the advance notice.

II. Description of Proposed Rule Change

Proposal

OCC filed this advance notice to change the expiration date for most option contracts (''Standard Expiration Contracts'') to the third Friday of the specified expiration month (''Expiration Date''). Standard Expiration Contracts currently expire at the ''expiration time'' (11:59 p.m. Eastern Time) on the Saturday following the third Friday of the specified expiration month (''Expiration Date'').[6]

The proposed change applies only to series of option contracts opened for trading after the effective date of this proposed rule change and having Expiration Dates later than February 1, 2015. Option contracts having non-standard expiration dates (''Non-standard Expiration Contracts'') are unaffected by this proposed rule change.[7]

In order to provide a smooth transition to the Friday expiration, OCC intends to, beginning June 21, 2013, move the expiration exercise procedures to Friday for all Standard Expiration Contracts even though the contracts would continue to expire on Saturday.[8] After February 1, 2015, virtually all Standard Expiration Contracts will expire on Friday. According to OCC, the only Standard Expiration Contracts that will expire on a Saturday after February 1, 2015 are certain options that were listed prior to the effectiveness of this rule change,[9] and a limited number of options that may be listed prior to necessary systems changes of the options exchanges, which are expected to be completed in August 2013.[10] After the transition period and the expiration of all existing Saturday-expiring options, expiration processing should be a single operational process and should run on Friday night for all Standard Expiration Contracts.

In connection with moving from Saturday to Friday night processing and expiration, OCC reviewed other aspects of its business to confirm that there would be no unintended consequences, and concluded that there would be none. For example, OCC believes the proposed changes do not affect OCC's liquidity forecasting procedures, nor do they impact OCC's liquidity needs, since OCC's liquidity forecasts and liquidity needs are driven by settlement obligations, which occur on the same day (T+3) irrespective of the move to Friday night processing and expiration dates. According to OCC, industry groups, clearing members, and options exchanges have been active participants in planning for the transition to the Friday expiration. OCC has obtained

[1] OCC was designated as a systemically important financial market utility (''FMU'') by the Financial Stability Oversight Council (''FSOC'') on July 18, 2012. *See* FSOC 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, OCC is required to comply with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[3] OCC also filed the proposals contained in this advance notice as a proposed rule change, under Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking Commission approval to permit OCC to change its rules to reflect the proposed changes in this advance notice. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4; See Exchange Act Release No. 69480 (April 30, 2013) (SR–OCC–2013–04).

[4] Securities Exchange Act Release No. 34–69603 (May 17, 2013), 78 FR 30944 (May 23, 2013) (''Notice of Filing of Advance Notice'').

[5] *See* Comment from John V. Bruzzese dated May 3, 2013 (stating that the change would be ''beneficial for [the] option expiration process'') (*http://sec.gov/comments/sr-occ-2013-04/occ201304-1.htm*).

[6] *See* the definition of ''expiration time'' in Article I of OCC's By-Laws.

[7] Examples of options with Non-standard Expiration Contracts include flex options and quarterly, monthly, and weekly options where the expiration exercise processing for such options presently occurs on a weekday.

[8] For contracts having a Saturday expiration date, exercise requests received after Friday expiration processing is complete but before the Saturday contract expiration time will continue to be processed so long as they are submitted in accordance with OCC's procedures governing such requests.

[9] According to OCC, certain option contracts have already been listed on exchanges with expiration dates as distant as December 2016. Such options have Saturday expiration dates and OCC cannot change the terms of existing option contracts. In addition, clearing members have expressed a clear preference not to have open interest in any particular month with different expiration dates. Therefore, OCC will designate certain expiration dates as ''grandfathered,'' and any option contract that is listed, or may be listed in the future, that expires on a grandfathered date will have a Saturday expiration date even if such expiration date is after February 1, 2015. After OCC designates an expiration date as grandfathered, the exchanges have agreed not to permit the listing of, and OCC will not accept for clearance, any newly listed standard expiration option contract with a Friday expiration in the applicable month.

[10] The exchanges have agreed that once these systems changes are made they will not open for trading any new series of option contracts with Saturday expiration dates falling after February 1, 2015.

assurances from all options industry participants that they will be ready to move to Friday night expiration processing by June 2013.

Rule Changes

In order to implement the change to Friday expiration processing and eventual transition to Friday expiration for all Standard Expiration Contracts, OCC is amending the definition of ''expiration date'' in Article I and certain other articles of the By-Laws. As amended, the applicability of the definition is no longer limited to stock options, and the definition of ''expiration date'' in certain articles of the By-Laws therefore is deleted in reliance on the Article I definition. OCC is also amending Rule 805, and all rules supplementing or replacing Rule 805, to allow for Friday expiration processing during the transition to Friday expiration. OCC is also amending section 18 of Article VI of the By-Laws to align procedures for delays in producing Expiration Exercise Reports and submission of exercise instructions with the amended expiration exercise procedures in Rule 805. OCC is amending Rule 801 to modify the prohibition against exercising an American-style option contract on the business day prior to its expiration date, because this prohibition is necessary only for options expiring on a Saturday, and to remove clearing members' ability to revoke or modify exercise notices in order to accommodate the compressed Friday expiration processing expiration schedule.

Finally, OCC is amending Rules 801 and 805 to allow certain determinations to be made by high-level officers of OCC, rather than the Board of Directors, in order to provide OCC with greater operational flexibility in processing exercise requests received after Friday expiration processing is complete but before the Saturday contract expiration time, and to replace various references to the expiration date of options with reference to the procedures of Rule 805.

Under the proposed change, OCC is preserving the ability of the options exchanges to designate (or, in the case of flexibly structured options, permit clearing members to designate) non-standard expiration dates for options, or classes or series of options, so long as the designated expiration date is not a date OCC has specified as ineligible to be an expiration date.

III. Analysis of Advance Notice

Although Title VIII does not specify a standard of review for an Advance Notice, the Commission believes that the stated purpose of Title VIII is instructive.[11] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities (''FMU'') and providing an enhanced role for the Federal Reserve Board in the supervision of risk management standards for systemically-important FMUs.[12]

Section 805(a)(2) of the Clearing Supervision Act[13] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[14] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- Promote safety and soundness;
- Reduce systemic risks; and
- Support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012 (''Clearing Agency Standards'').[15] The Clearing Agency Standards became effective on January 2, 2013 and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[16] As such, the Commission believes it is appropriate to review Advance Notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b).

OCC's proposal to move the expiration date of Standard Expiration Contracts to the third Friday of the month, as described above, is designed to help mitigate operational risk that Saturday expiration imposes on OCC and its members. Consistent with Section 805(b) of the Clearing Supervision Act,[17] the Commission believes the proposed changes should promote safety and soundness of OCC's operations and reduce systemic risks by allowing OCC to streamline the expiration process among Standard Expiration Contracts and Non-Standard Expiration Contracts and quarterly options and weekly options. It should also allow OCC to align the expiration process for Standard Expiration Contracts with expiration processing schedules for European markets and should allow clearing members to run a single operational process for all US equity/index options regardless of where such options are exercised.

Furthermore, Rule 17Ad–22(d)(4), adopted as part of the Clearing Agency Standards, requires clearing agencies to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures . . . .''[18] The Commission believes the proposed rule changes minimize operational risk through the development of a system to move the expiration date of Standard Expiration Contracts to the third Friday of the month so that exercise processing across Standard Expiration Contracts, Non-standard Expiration Contracts, quarterly options, and weekly options occur on the same day in a single operational process.

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[19] that, the Commission *does not object* to the advance notice (File No. SR–OCC–2013–802) and that OCC be and hereby is *authorized* to implement proposed rule change (File No. AN–OCC–2013–802) as of the date of this notice or the date of an ''Order Approving Proposed Rule Change to Change the Expiration Date for Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday''

[11] 12 U.S.C. 5461(b).

[12] *Id.*

[13] 12 U.S.C. 5464(a)(2).

[14] 12 U.S.C. 5464(b).

[15] Clearing Agency Standards, Securities Exchange Act Release No. 34–68080 (October 22, 2012), 77 FR 66219 (November 2, 2012).

[16] The Clearing Agency Standards are substantially similar to the risk management standards established by the Federal Reserve Board governing the operations of designated FMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

[17] *See* 12 U.S.C. 5464(b).

[18] 17 CFR 240.17Ad–22(d)(4).

[19] 12 U.S.C. 5465(e)(1)(I).

(File No. SR–OCC–2013–04), whichever is later.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14685 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69768; File No. SR–Phlx–2013–61]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Sections of the Exchange's Pricing Schedule

June 14, 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 June 3, 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 amend the Exchange's Pricing Schedule to: (i) Amend the Customer Rebate Program; (ii) adopt new pricing specific to options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY''); [3] (iii) amend the Complex Order [4] Fee for Removing Liquidity applicable to Specialists and Market Makers in receipt of certain directed orders; and (iv) amend PIXL [5] Pricing.

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 Exchange proposes to amend existing Section B, entitled ''Customer Rebate Program,'' Section I, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' [6] and Section IV, A ''PIXL Pricing.'' The Exchange also proposes to adopt a new Section C, entitled ''Rebates and Fees for Adding and Removing Liquidity in SPY.'' Each proposed amendment is described in greater detail below.

Customer Rebate Program

Currently, the Exchange has in place a four tier structure Customer Rebate Program at Section B of the Pricing Schedule which pays Customer rebates on four Categories (A, B, C and D) of transactions. The four tier structure pays rebates based on percentage thresholds of national customer multiply-listed options volume by month based on the same four Categories (A, B, C and D) of transactions. Specifically, the Exchange bases a market participant's qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx as follows:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes (monthly)	Category A	Category B	Category C	Category D
Tier 1	0.00%–0.75%	$0.00	$0.00	$0.00	$0.00
Tier 2	Above 0.75%–1.60%	0.11	0.12	0.13	0.08
Tier 3	Above 1.60%–2.60%	0.13	0.13	0.14	0.08
Tier 4	Above 2.60%	0.15	0.15	0.15	0.09

Today, the Exchange totals Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o).[7] Members and member organizations under common ownership [8] may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts are paid a rebate regardless of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SPY options are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index.

[4] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[5] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL[SM]). *See* Rule 1080(n).

[6] The Select Symbols are listed in Section I.

[7] The Exchange calculates volume and pay rebates based on a member organization's Phlx house account numbers.

[8] Common ownership means 75% common ownership or control.

the contra party to the transaction. Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I. Category D rebates are paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

The Exchange is proposing to amend the rebates paid to market participants with this proposal. The Exchange proposes to continue to pay Categories A, B, C and D no rebate with proposed Tier 1 which is between 0.00% to 0.75% of national customer volume in multiply-listed options classes. Currently, the Exchange pays the following Tier 2 rebates for a percentage of national customer volume in multiply-listed options classes above 0.75% to 1.60%: Category A: $0.11, Category B: $0.12, Category C: $0.13 and Category D: $0.08. The Exchange is proposing to increase the Tier 2 Category A rebate from $0.11 to $0.12 per contract, the Category B rebate from $0.12 to $0.17 per contract and the Category C rebate from $0.13 to $0.17 per contract. The Category D rebate for Tier 2 would remain at $0.08 per contract. Currently, the Exchange pays the following Tier 3 rebates for a percentage of national customer volume in multiply-listed options classes above 1.60% to 2.60%: Category A: $0.13, Category B: $0.13, Category C: $0.14 and Category D: $0.08. The Exchange is proposing to increase the Tier 3 Category A rebate from $0.13 to $0.14 per contract, the Category B rebate from $0.13 to $0.17 per contract and the Category C rebate from $0.14 to $0.17 per contract. The Category D rebate for Tier 3 would remain at $0.08 per contract. Currently, the Exchange pays the following Tier 4 rebates for a percentage of national customer volume in multiply-listed options classes above 2.60%: Category A: $0.15, Category B: $0.15, Category C: $0.15 and Category D: $0.09. The Exchange is proposing to increase the Tier 4 Category B rebate from $0.15 to $0.17 per contract and the Category C rebate from $0.15 to $0.17 per contract. The Tier 4 Category A rebate would remain at $0.15 per contract and the Tier 4 Category D rebate would remain at $0.09 per contract.

As is the case today, the Exchange is proposing to continue to permit the electronically-delivered and executed volume associated with options on SPY to be included in the calculation of Multiply Listed Options, however SPY options will no longer be paid the Customer rebates in Section A because SPY options will no longer be part of Section I, as proposed below. Today SPY is defined as a Select Symbol in Section I of the Pricing Schedule. The Exchange is proposing below to remove SPY from the definition of Select Symbol and adopt new pricing which applies to SPY. In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation will remain unchanged and will continue to include all electronically-delivered and executed Customer volume in Multiply Listed Options. The Exchange is proposing to amend the denominator of that equation by excluding volume associated with SPY from the computation of national customer volume in multiply-listed equity and ETF options volume. The Exchange believes it is appropriate to make this modification to afford members the opportunity to achieve new Customer Rebate Program tiers or maintain their current level of Customer Rebate Program tiers in light of the proposed changes below. The Exchange notes that options on SPY account for approximately 15% of the equity and ETF options volume in the industry. The proposed pricing in new Section C, described below, would contain rebates applicable to SPY options. Therefore, the Exchange would not pay rebates on SPY options as part of the Customer Rebate Program.

The Exchange believes that increasing the amount of rebates that will be paid to market participants that qualify for certain Categories of rebates in Tiers 2, 3 and 4 will encourage market participants to send increased Customer order flow to the Exchange to the benefit of all market participants. The Exchange also believes that continuing to include options on SPY transactions in the calculation for qualifying tiers will continue to encourage Customer order flow in SPY.

Section C–SPY

The Exchange proposes to not apply Section I pricing to options on SPY and instead adopt new pricing in a new Section C entitled ''Rebates and Fees for Adding and Removing Liquidity in SPY'' for options on SPY. The Exchange also proposes to remove the symbol ''SPY'' from the list of Select Symbols in Section I of the Pricing Schedule.

The Exchange proposes to adopt ''Make/Take'' pricing for SPY in both Simple and Complex Orders. The Exchange proposes to adopt the following pricing for options on SPY in Simple Orders in a new Part A to Section C:

	Customer	Specialist	Market maker	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity	$0.00	$0.20	$0.20	$0.00	$0.00	$0.00
Fee for Removing Liquidity	0.44	0.44	0.44	0.44	0.44	0.44

Today, Specialists [9] and Market Makers [10] transacting Simple Orders in Select Symbols are paid a $0.20 per contract Rebate for Adding Liquidity only when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.[11] If the Specialist or Market Maker is contra to a Customer order, the Specialist or Market Maker is assessed the Simple Order Fee for Adding Liquidity. The Exchange assesses Specialists and Market Makers a $0.10 per contract Fee for Adding Liquidity for Simple Orders in Select Symbols and Firms, Professionals and Broker-Dealers pay a $0.45 per contract Fee for Adding Liquidity for Simple Orders in Select Symbols. Customers are not assessed a Simple Order Fee for Adding or Removing Liquidity in Select Symbols. Specialists, Market Makers, Firms, Broker-Dealers and Professionals are assessed a $0.45 per contract Fee for Removing Liquidity in Select Symbols.

The Exchange proposes to adopt a ''Make/Take'' pricing model with

[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).

respect to SPY options wherein the Exchange would pay a rebate to liquidity providers and assess a fee on liquidity takers. The Exchange therefore proposes to adopt certain Rebates for Adding Liquidity for Specialists and Market Makers of $0.20 per contract and assess a $0.44 per contract Fee for Removing Liquidity on all market participants with respect to Simple Order SPY options. Customers, Firms, Broker-Dealers and Professionals would not be assessed a fee for adding liquidity in SPY Simple Orders. Unlike the pricing for Simple Order Select Symbols, the Exchange would pay a rebate to Specialists and Market Makers for each transaction in SPY, regardless of the contra party. Therefore, Firms, Broker-Dealers and Professionals would be assessed a lower fee because the Simple Order Fees for Removing Liquidity in SPY are decreased from $0.45 to $0.44 per contract. Customers would now pay $0.44 per contract when removing liquidity as compared to no fee today, but would remain free with respect to adding liquidity. Specialists and Market Makers would pay lower fees as compared to today.

The Exchange proposes to adopt the following pricing for options on SPY in Complex Orders in a new Part B to Section C:

	Customer	Specialist	Market maker	Firm	Broker-dealer	Professional
Fee for Adding Liquidity	$0.00	$0.10	$0.10	$0.10	$0.10	$0.10
Fee for Removing Liquidity	0.00	0.40	0.40	0.50	0.50	0.50

Today, all market participants, other than a Customer are assessed a Complex Order Fee for Adding Liquidity in Select Symbols of $0.10 per contract. A Customer is not assessed a Complex Order Fee for Adding or Removing Liquidity in Select Symbols. Today, a Specialist and Market Maker are assessed a $0.25 per contract Complex Order Fee for Removing Liquidity and a Firm, Broker-Dealer and Professional are assessed $0.50 per contract Complex Order Fee for Removing Liquidity in Select Symbols. The Exchange proposes to adopt pricing for SPY options and continue to not assess a Customer either a Fee for Adding or Removing Liquidity in Complex Orders in SPY options. All market participants, other than a Customer, would be assessed a $0.10 per contract Complex Order Fee for Adding Liquidity in SPY options, as is the case today in Select Symbols. The Exchange proposes to adopt Complex Order Fees for Removing Liquidity for SPY options as follows: A Specialist and Market Maker would be assessed $0.40 per contract Complex Order Fee for Removing Liquidity and a Firm, Broker-Dealer and Professional would be assessed $0.50 per contract. The Exchange would pay a Customer rebate of $0.38 per electronically-delivered and executed contract in Complex Orders in SPY options. The Exchange would therefore increase the Complex Order Fees for Removing Liquidity in SPY options for Specialists and Market Makers.

Similar to Section I pricing, the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity, except with respect to orders that trigger an order exposure alert.

The Exchange also proposes to decrease Complex Order Fees for Removing Liquidity applicable to Specialists and Market Makers by $0.02 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution. Today, the Exchange decreases the Complex Order Fees for Removing Liquidity applicable to Specialists and Market Makers by $0.05 per contract pursuant to a Pilot Program.[12] As described in greater detail below, the Exchange proposes to reduce the Complex Order Fees for Removing Liquidity applicable to Specialists and Market Makers from $0.02 to $0.05 per contract for Select Symbols and SPY. In addition, the Exchange proposes to pay Customers a rebate of $0.38 per contract for SPY transactions in Complex Orders. The Exchange believes that the proposed pricing will encourage market participants to direct orders in SPY options to the Exchange.

The Exchange also states in the Pricing Schedule, similar to Section I pricing, that Simple Orders that are executed against the individual components of Complex Orders will be assessed the fees and rebates in Part A (Simple Orders) and the individual components of such a Complex Order will be assessed the fees in Part B (Complex Orders).

The Exchange proposes to assess no fees and pay no rebates on transactions which execute against an order for which the Exchange broadcast an order exposure alert in SPY. Rule 1080(m) provides for the broadcast of certain orders that are on the Phlx Book.[13] The Exchange broadcasts orders on the Phlx Book by issuing order exposure alerts to all Phlx market participants that subscribe to certain data feeds. The Exchange believes that by not assessing fees (or paying a rebate) when removing orders from the order book in SPY where an order exposure alert was issued, will incentivize market participants to remove liquidity from the Phlx Book.

As explained above, SPY Customer volume will be included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program in Section A, however the rebates defined in Section A will not apply to electronic executions in SPY.

Today, the Monthly Market Maker Cap[14] is not applicable to electronic transactions in the Select Symbols, except Qualified Contingent Cross (''QCC'') Transaction Fees.[15] The

[12] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[13] *See* Rule 1080(m) and *see also* Securities Exchange Act Release No. 68517 (December 21, 2012), 77 FR 77134 (December 31, 2012) (SR–Phlx–2012–136).

[14] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

[15] 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 (''NBBO'') 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

Exchange proposes to apply the Monthly Market Maker Cap to SPY transactions as it is applied today.

Today, the Monthly Firm Fee Cap [16] applies to floor transactions in Select Symbols and QCC Orders (electronic and floor transactions). The Exchange proposes to apply the Monthly Firm Fee Cap to SPY transactions as it is applied today.

Today, Payment for Order Flow Fees [17] are collected on transactions in the Select Symbols, except when a Specialist or Market Maker is also assessed the Simple Order Fee for Removing Liquidity, in which case the Payment for Order Flow fees will not apply. The Exchange proposes to not collect PFOF on transactions in SPY options.

Today, the Cancellation Fee for each cancelled electronically delivered Professional AON order applies to Select Symbols. The Cancellation Fee does not apply for each cancelled electronically delivered Customer order in Select Symbols. The Exchange proposes to apply the Cancellation Fee to SPY transactions as it is applied today.

Today, transactions in Select Symbols originating on the Exchange floor are subject to the Multiply Listed Options Fees in Section II. However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. The Exchange proposes to treat transactions originating on the Exchange floor in SPY as they are applied today.

Today, non-Complex electronic auctions include the Quote Exhaust auction and, for purposes of fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA'').[18] Customer executions that occur as part of a Complex electronic auction are assessed $0.00 per contract. However, the Exchange would pay the applicable proposed Customer rebate of $0.38 per contract for Customer executions in a Complex electronic auction in SPY.

Today, Customer executions that occur as part of a non-Complex electronic auction are assessed $0.00 per contract. Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a Complex electronic auction are assessed the Fees for Removing Liquidity in Section I, Part B. Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a non-Complex electronic auction are assessed the Fees for Adding Liquidity in Section I, Part B. The Exchange proposes to treat transactions in auctions in the same manner for SPY options and assess the fees in Section C, Part B.

Today, QCC Transaction fees and rebates, defined in Section II, are applicable to Section I. This will also be the case for SPY in that the QCC Transaction fees and rebates will be applicable to Section C.

With respect to PIXL Pricing, today an Initiating Order is assessed $0.07 per contract or $0.05 per contract if Customer Rebate Program Threshold Volume defined in Section B of the Pricing Schedule is greater than 100,000 contracts per day in a month.[19] The Exchange reduces the Initiating Order [20] Fee for Firms that are contra to Customer PIXL Orders to $0.00 per contract if the Customer PIXL Order is greater than 999 contracts. Today, with respect to Select Symbols: (i) When the PIXL Order is contra to the Initiating Order a Customer PIXL Order is assessed $0.00 per contract and all non-Customer market participant PIXL Orders are assessed $0.30 per contract when contra to the Initiating Order; (ii) when a PIXL Order is contra to a PIXL Auction Responder, the PIXL Order is assessed the Fee for Adding Liquidity in Section I and the Responder is assessed $0.30 per contract, unless the Responder is a Customer, in which case the fee will be $0.00 per contract; and (iii) when the PIXL Order is contra to a resting order or quote that was on the Phlx Book prior to the auction, the PIXL Order is assessed the Fee for Removing Liquidity not to exceed $0.30 per contract and the resting order or quote is assessed the Fee for Adding Liquidity in Section I. If the resting order or quote that was on the Phlx Book was entered during the Auction, the PIXL Order is assessed the Fee for Adding Liquidity in Section I and the resting order or quote is assessed the Fee for Removing Liquidity not to exceed $0.30 per contract.

The Exchange proposes to adopt PIXL Pricing in new Section C to assess Initiating Orders in SPY options $0.05 per contract for all market participants. In addition, when the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed $0.00 per contact and all non-Customer market participants will be assessed a $0.38 per contract fee when contra to the Initiating Order. Also, when a PIXL Order is contra to other than the Initiating Order,[21] the PIXL Order will be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of $0.38 per contract. All other contra parties to the PIXL Order, other than the Initiating Order, will be assessed a reduced Fee for Removing Liquidity of $0.38 per contract or will receive the Rebate to Add Liquidity.

The Exchange believes that the proposed pricing for SPY options will encourage market participants to send an even greater amount of SPY orders to the Exchange to take advantage of the new pricing for SPY and lower costs in certain circumstances.

Finally, the Exchange proposes to amend the Preface to the Pricing

through exemption in connection with Rule 611(d) of the Regulation NMS).

[16] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[17] The Payment for Order Flow (''PFOF'') Program assesses fees to Specialists and Market Makers resulting from Customer orders (''PFOF Fees''). The PFOF fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Market Maker to order flow providers who are members or member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. Any excess PFOF funds billed but not utilized by the Specialist or Market Maker are carried forward unless the Specialist or Market Maker elects to have those funds rebated on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable Specialist or Market Maker who paid into that pool of funds.

[18] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. *See* Exchange Rule 1080.

[19] *See* Section IV, A Pricing.

[20] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[21] For example, a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

Schedule to include new Section C in the Preface.

Section I Complex Orders

On November 9, 2012, the Commission approved SR–Phlx–2012–27 and SR–Phlx–2012–54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 (''Approval Order'').[22] The Approval Order reinstated the fees that were proposed by the Exchange in SR–Phlx–2012–27.[23] Specifically, the Approval Order permits a $0.05 fee differential as between Specialists and Market Makers that receive directed [24] Complex Orders and those that do not receive directed Complex Orders. Today, the Exchange decreases the Complex Order Fee for Removing Liquidity applicable to Specialists and Market Makers of $0.25 per contract by $0.05 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution. The pilot was approved for one year and expires on December 2, 2013. As part of the pilot program, the Exchange provides certain pilot reports.[25] The Exchange proposes to reduce the fee differential from $0.05 to $0.02 per contract and proposes to terminate the current pilot program that is in effect. The Exchange believes that it will continue to incentivize Specialists and Market Makers to remove liquidity on the Exchange with the lower fee differential.

Section IV PIXL Amendments

The Exchange proposes to amend PIXL pricing at Section IV, Part A of the Pricing Schedule. As noted above, today the Exchange assesses an Initiating Order a $0.07 per contract or $0.05 per contract fee if the Customer Rebate Program Threshold Volume, defined in Section B, is greater than 100,000 contracts per day in a month.[26] If the Initiating Order fee is for a Firm that is contra to a Customer PIXL Order, the Initiating Order Fee is reduced to $0.00 if a Customer PIXL Order is greater than 999 contracts. The Exchange proposes to expand the reduction of the Initiating Order Fee to a Professional, Broker-Dealer, Specialist and Market Maker, as well as a Firm. Customers are not assessed an Initiating Order Fee. The Exchange believes that this amendment will encourage all market participants to transact a greater number of PIXL Orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [27] in general, and furthers the objectives of Section 6(b)(4) of the Act [28] in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Customer Rebate Program

The Exchange's proposal to increase certain Customer rebates in Tiers 2, 3 and 4 is reasonable because the increased rebates will encourage market participants to send increased Customer order flow to the Exchange to the benefit of all market participants. The Exchange's proposal to increase certain Customer rebates in Tiers 2, 3 and 4 is equitable and not unfairly discriminatory because the Exchange would pay the Customer rebates uniformly with respect to market participants transacting qualifying orders. Any market participant that transacts qualifying orders is eligible for a Customer rebate.

The Exchange's proposal to not pay Customer rebates on SPY options, but continue to include SPY options in the calculation of Multiply Listed Options that qualify for Customer rebates in Section A of the Pricing Schedule is reasonable because market participants would continue to benefit from SPY option volume in terms of qualifying for Customer Rebate Tiers. Also, the Exchange will offer a Customer rebate of $0.38 per contract for Complex Order transactions in SPY options. The Exchange's proposal to not pay Customer Rebate Program rebates in Section B for transactions in SPY options, but continue to include SPY options in the calculation of Multiply Listed Options that qualify for Customer rebates in Section B of the Pricing Schedule is equitable and not unfairly discriminatory because the Exchange would apply the calculation of Customer rebates and would pay rebates on qualifying orders in a uniform manner. Further, the Exchange's proposal to remove SPY options volume from the industry calculation is reasonable because it allows members and member organizations to have the flexibility in routing decisions with respects to SPY while maintaining their current level rebate tiers. The Exchange's proposal to remove SPY options volume from the industry calculation is equitable and not unfairly discriminatory because the Exchange [sic] would no longer apply uniformly to all market participants.

The Exchange's proposal to adopt new pricing for SPY is reasonable, equitable, and not unfairly discriminatory because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. SPY options are currently the most actively traded equity or ETF option class.[29] Other options exchanges price by symbol.[30]

The Exchange's proposed new Simple and Complex Order pricing, which adopts ''Make/Take'' pricing, in SPY options is reasonable because the Exchange desires to incentivize market participants to transact a greater number of SPY options. The Exchange is offering pricing specific to SPY because, as previously mentioned, SPY options are currently the most actively traded options class and therefore the Exchange believes that incentivizing Specialists and Market Makers to add increased liquidity in SPY options and encouraging market participants to send Customer order flow to the Exchange by offering Complex Order Customer rebates and PIXL incentives will benefit

[22] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[23] Specifically, SR–Phlx–2012–27 proposed to: (1) Increase the Customer Complex Order Rebate for Adding Liquidity from $0.30 to $0.32 per contract; (2) create a new Complex Order Rebate for Removing Liquidity and specifically pay a Customer a $0.06 Complex Order Rebate for Removing Liquidity; and (3) increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from $0.35 per contract to $0.38 per contract. These filings were initially suspended and later approved on a pilot basis. *See* Securities Exchange Act Release Nos. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR–Phlx–2012–27) and 66883 (April 30, 2012), 77 FR 26591 (May 4, 2012) (SR–Phlx–2012–54). By order dated April 30, 2012, the Commission suspended SR–Phlx–2012–27 and SR–Phlx–2012–54. *See* Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[24] An order that is ''directed'' is one that is directed by an Order Flow Provider to a specific Market Maker or Specialist when that order is entered electronically into PHLX XL II. The term ''Order Flow Provider'' means any member or member organization that submits, as agent, orders to the Exchange. *See* Rule 1080(l)(i)(B).

[25] *See* note 22.

[26] Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section B receives the PIXL Initiating Order discount as described above.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4).

[29] For May 2013, SPY Options accounted for approximately 15% of the overall equity and ETF options volume. By comparison, the second most actively traded equity or ETF option are AAPL Options, which account for approximately 4% of the overall equity and ETF options volume.

[30] *See* the Chicago Board Options Exchange Incorporated's Fees Schedule and the International Securities Exchange LLC.

all market participants through increased liquidity, tighter markets and order interaction. The Exchange believes it is reasonable to assess lower fees to transact SPY options in Simple Orders to Specialists, Market Makers, Firms, Broker-Dealers and Professionals because the Exchange seeks to incentivize these market participants to transact a greater number of Simple Order SPY options. The Exchange would assess higher fees to Customers in the form of a Simple Order Fee for Removing Liquidity in SPY options. Assessing Customers Fees for Removing Liquidity, similar to other market participants, is reasonable in a ''Make/Take'' pricing model because the model seeks to reward liquidity providers by assessing takers. Other options exchanges similarly assess Customers fees to remove liquidity.[31] The Exchange also believes that it is reasonable to increase the Specialist and Market Maker Complex Order Fees for Removing Liquidity in SPY options because Specialists and Market Makers would continue to be assessed lower fees as compared to Firms, Broker-Dealers and Professionals [32] and by increasing this fee, the Exchange is able to pay the proposed $0.38 per contract Customer rebate in Complex Orders in SPY options.

The Exchange's proposed Simple Order pricing is equitable and not unfairly discriminatory for the reasons below. Today, Specialists and Market Makers transacting Simple Orders in Select Symbols are paid a $0.20 per contract Rebate for Adding Liquidity only when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional and they also pay a $0.10 per contract Fee for Adding Liquidity and a $0.45 per contract Fee for Removing Liquidity in Select Symbols. The Exchange is proposing to continue to pay Specialists and Market Makers a Rebate for Adding Liquidity in Simple Orders in SPY options, but without limitation as to contra-party. The Exchange would not assess a Fee for Adding Liquidity and would assess a $0.01 per contract lower Fee for Removing Liquidity ($0.44 vs. $0.45 per contract) for Simple Orders in SPY options.

The Exchange believes that by providing Specialists and Market Makers a greater opportunity to earn a rebate and assessing lower Fees for Removing Liquidity and no Fees for Adding Liquidity will incentivize Specialists and Market Makers to interact with a greater number of Simple Orders in SPY options on the Exchange. Similar to Section I pricing, the Exchange is only paying a rebate to Specialists and Market Makers and not pay a similar rebate to other market participants because Specialists and Market Makers have obligations to the market and regulatory requirements,[33] which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. With respect to Firms, Broker-Dealers and Professionals, today the Exchange pays no Rebate for Adding Liquidity in Select Symbols to these market participants and uniformly assesses a $0.45 per contract Fee for Adding and Removing Liquidity for Simple Orders in Select Symbols. The Exchange is proposing to continue to not pay a Simple Order Rebate for Adding Liquidity to Firms, Broker-Dealers and Professionals in SPY options and also to not assess a Fee for Adding Liquidity for Simple Orders in SPY options. The Exchange proposes to lower the Fee for Removing Liquidity for Simple Orders in SPY options for Firms, Broker-Dealers and Professionals from $0.45 to $0.44 per contract. The Exchange would continue to uniformly assess the Fees for Removing Liquidity to all market participants for Simple Orders in SPY options. Customers would be assessed higher fees for Simple Orders in SPY options in terms of removing liquidity but would continue to be free with respect to adding liquidity. Today, Customers do not receive a Rebate for Adding Liquidity for Simple Orders in Select Symbols nor do they pay a Fee for Adding Liquidity in Simple Orders for Select Symbols. This will continue to be the case for Simple Orders in SPY options. Today, Customers do not pay a Simple Order Fee for Removing Liquidity in Select Symbols. With this proposal the Exchange would assess a $0.44 per contract Simple Order Fee for Removing Liquidity in SPY options similar to all other market participants. The Exchange believes that it is equitable and not unreasonably discriminatory to assess the same Simple Order Fee for Removing Liquidity in SPY options to all market participants.

The Exchange's proposed Complex Order pricing is equitable and not unfairly discriminatory for the reasons below. Today, Customers are not assessed a Complex Order Fee for Adding or Removing Liquidity in Select Symbols. In a classic pricing model, the Exchange has traditionally not assessed fees to Customers because Customer order flow brings unique benefits to the market. Other market participants benefit from the liquidity that Customer order flow brings to the Exchange. All market participants, except Customers, today pay a $0.10 per contract Complex Order Fee for Adding Liquidity in Select Symbols. The Exchange proposes to continue to assess all market participants, other than Customers, a $0.10 per contract Complex Order Fee for Adding Liquidity in SPY Options. Today, Specialists and Market Makers pay a $0.25 per contract Complex Order Fee for Removing Liquidity in Select Symbols and Firms, Broker-Dealers and Professionals pay a $0.50 per contract Complex Order Fee for Removing Liquidity in Select Symbols. The Exchange proposes to increase the Complex Order Fee for Removing Liquidity in SPY options for Specialists and Market Makers from $0.25 to $0.40 per contract. Firms, Broker-Dealers and Professionals would continue to be assessed $0.50 per contract Complex Order Fee for Removing Liquidity in SPY options because the Exchange is seeking to narrow the differential as between Specialists and Market Makers and Firms, Broker-Dealers and Professionals. Today, Specialists and Market Maker pay a Complex Order Fee for Removing Liquidity in Select Symbols of $0.25 per contract whereas Firms, Broker-Dealers and Professionals pay $0.50 per contract. That $0.25 per contract differential as between these market participants when removing liquidity in Complex Orders would be narrowed to $0.10 per contract by increasing the Specialist and Market Maker Complex Order Fee for Removing Liquidity from $0.25 to $0.40 per contract. The Exchange believes it is equitable and not unfairly discriminatory to continue to assess lower fees in SPY options to Specialists

[31] *See* The NASDAQ Options Market LLC's (''NOM'') Rules at Chapter XV, Section 2. NOM assesses Customers a $0.45 per contract Fee for Removing Liquidity in Penny Pilot Options and a $0.82 Fee for Removing Liquidity in Non-Penny Pilot Options.

[32] Customers are not assessed a Complex Order Fee for Removing Liquidity in SPY options.

[33] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

and Market Makers as compared to Firms, Broker-Dealers and Professionals because as explained herein, Specialists and Market Makers have obligations to the market and regulatory requirements,[34] which normally do not apply to other market participants.

As discussed more fully below, the Exchange believes that reducing the current fee differential for SPY options in new Section C, as well as Select Symbols, from $0.05 to $0.02 per contact is reasonable because the Exchange believes that reducing Specialist and Market Maker Fees for Removing Liquidity in Complex Orders when such orders are directed to these [sic] seeks to incentivize market participants to direct and transact a greater number of Customer Complex Orders at the Exchange. Creating these incentives and attracting Customer Complex Orders to the Exchange, in turn, benefits all market participants through increased liquidity at the Exchange. A higher percentage of Customer Complex Orders leads to increased Complex Order auctions and better opportunities for price improvement.

The Exchange believes that reducing the current fee differential for SPY options in new Section C, as well as Select Symbols, from $0.05 to $0.02 per contact is equitable and not unfairly discriminatory because Specialists and Market Makers have burdensome quoting obligations [35] to the market which do not apply to Firms, Professionals and Broker-Dealers. Also, Specialists and Market Makers that receive directed orders have higher quoting obligations [36] compared to other Specialists and Market Makers and therefore are assessed a lower fee when they transact with a Customer order that was directed to them for execution as compared to Specialists and Market Makers. In addition, the Exchange believes that reducing the discount for directed orders will narrow the fee differential as between Specialists and Market Makers that receive directed orders and those that do not receive directed orders.

The Exchange believes that it is reasonable, equitable and not unreasonably discriminatory [37] to pay a Customer Complex Order rebate of $0.38 per contract in SPY options because such a rebate would attract increased Customer Complex Order flow to the Exchange which liquidity benefits all market participants. Customer order flow benefits market participants and provides the opportunity for increased order interaction on the Exchange.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to specify within new Section C (SPY) pricing that similar to Section I (Select Symbol) pricing, the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity, except with respect to orders that trigger an order exposure alert and that Simple Orders that are executed against the individual components of Complex Orders will be assessed the fees and rebates in Part A, however, the individual components of such a Complex Order will be assessed the fees in Part B. The Exchange believes that this text will clarify the application of the pricing in Section C, similar to Section I. The Exchange is not proposing to amend this language, but rather represent that the same method by which the Exchange determines whether an order adds or removes liquidity and what pricing applies, Simple or Complex, applies in new Section C.

The Exchange's proposal to assess no fees and pay no rebates on transactions which execute against an order for which the Exchange broadcast an order exposure alert in SPY is reasonable because by not imposing any pricing when market participants respond to broadcasts orders and remove orders from the Phlx Book will incentivize market participants to respond to additional broadcast orders. The Exchange's proposal to assess no fees and pay no rebates on transactions which execute against an order for which the Exchange broadcast an order exposure alert in SPY options is equitable and not unfairly discriminatory because the Exchange proposes to not assess fees or pay rebates uniformly for all market participants.

The Exchange's proposal to not apply the Monthly Market Maker Cap to electronic transactions in the Select Symbols, except QCC Transaction Fees is reasonable, equitable and not unfairly discriminatory because this is the same manner in which the Monthly Market Maker Cap applies to Section I pricing.

The Exchange's proposal to apply the Monthly Firm Fee Cap to floor transactions in Select Symbols and QCC Orders (electronic and floor transactions) is reasonable, equitable and not unfairly discriminatory because this is the same manner in which the Monthly Firm Fee Cap applies to Section I pricing.

The Exchange's proposal to not collect PFOF on transactions in SPY options is reasonable because the Exchange seeks to encourage market participants to transact a greater number of SPY option orders. The Exchange's proposal to not collect PFOF on transactions in SPY options is equitable and not unfairly discriminatory because the Exchange would not assess PFOF on any market participant transacting SPY.

The Exchange's proposal to apply the Cancellation Fee for each cancelled electronically delivered Professional AON order in SPY options as it applies today to Select Symbols is reasonable, equitable and not unfairly discriminatory as the Exchange is not proposing to treat SPY options differently from Select Symbols with respect to the Cancellation Fee.

The Exchange's proposal to subject transactions in SPY options originating on the Exchange floor to the Multiply Listed Options Fees in Section II, unless one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then applicable fees in Part C will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction is reasonable, equitable and not unfairly discriminatory because the Exchange proposes to not amend the manner in which SPY options are treated today as Select Symbols.

The Exchange's proposal to treat Customer executions which occur as part of a non-Complex electronic auction and a Complex electronic auction in the same manner for SPY options as exists today for Select Symbols is reasonable, equitable and not unfairly discriminatory because the Exchange is not proposing to amend these fees. In addition, the Exchange would pay the applicable proposed Customer Complex Order rebate of $0.38 per contract for Customer executions in an auction which should benefit market participants as described herein.

The Exchange believes that paying Customers a $0.38 per contract rebate when Complex Order transactions in SPY options are transacted is reasonable because it encourages Customer order flow in SPY options, which order flow benefits all market participants. The

[34] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[35] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[36] *Id.*

[37] The Commission notes that Section 6(b) of Act the prohibits unfair discrimination. 15 U.S.C. 78f(b).

Exchange believes that paying Customers a $0.38 per contract rebate when Complex Order transactions in SPY options are transacted is equitable and not unfairly discriminatory because Customer order flow bring unique benefits to the market which benefits all market participants. The Exchange today offers Customer rebates in Section B and would now instead pay this rebate for SPY options in Complex Orders.

The Exchange's proposal to treat QCC Transaction fees and rebates for SPY options in the same manner as exists today for Select Symbols is reasonable, equitable and not unfairly discriminatory because the Exchange is not proposing to amend these fees or rebates.

The Exchange's proposal to amend PIXL pricing for SPY options is reasonable because the Exchange is seeking to incentivize market participants to transact a greater number of SPY options in PIXL by lower the Initiating Order Fee to $0.05 per contract for all market participants for all PIXL transactions. The Exchange's proposal to increase the fee that will be assessed to non-Customer market participants that are contra to an Initiating Order for SPY options from $0.30 to $0.38 per contract is reasonable because the Exchange is offering to pay a Customer rebate of $0.38 per contract when the PIXL Order is contra to an order other than an Initiating Order [38] in order to incentivize market participants to transact a greater number of Customer SPY options in PIXL. The fee increase would provide the Exchange the opportunity to offer the $0.38 Customer rebate. The Exchange also believes that it is reasonable to assess a PIXL Order that is contra to other than the Initiating Order $0.00 per contract, unless the order is a Customer order, in which case the Exchange would pay a Customer rebate of $0.38 per contract to remove liquidity because the Exchange desires to incentivize its market participants to transact a greater number of SPY PIXL orders. The Exchange believes it is reasonable that all other contra parties to the PIXL Order, other than the Initiating Order, will be equally assessed a reduced Fee for Removing Liquidity of $0.38 per contract when removing or they will receive the Rebate for Adding Liquidity if adding because the Exchange desires to equally provide all market participants the same incentivizes to encourage them to transact a greater number of SPY PIXL Orders.

The Exchange's proposal to amend PIXL pricing for SPY options is equitable and not unfairly discriminatory because the Exchange proposes to assess all market participants transacting SPY options in PIXL a $0.05 per contract for Initiating Orders in SPY options. The Exchange's proposal to increase the fee for non-Customer market participants that are contra to a PIXL Order from $0.30 to $0.38 per contract is equitable and not unfairly discriminatory because the Exchange is seeking to incentivize Customer orders in PIXL. As explained herein, Customer order flow benefits all market participants through increased liquidity and therefore increasing the fee that will be assessed to non-Customer market participants benefits all market participants because of the increased liquidity that such order flow will bring to the market. With respect to PIXL Orders that are contra to other than the Initiating Order, the Exchange will not assess a Customer PIXL Order a fee unless the order is contra a Customer order and then the fee will be increased because of the rebate that is being assessed. The Exchange believes that it is equitable and not unfairly discriminatory to lower fees for all market participants that are contra to other than an Initiating Order because the treatment is the same for all participants; the fee amendment applies uniformly to all non-Customer market participants. Also, the Exchange proposes to uniformly assess all market participants a fee when a Customer rebate would be paid to enable the Exchange to offer the rebate. The Exchange believes that widening the differential as between the Initiating Order Fee and the contra party to the PIXL Order ($0.05 vs. $0.38) as compared to the cost to transact a PIXL Order today ($0.05 or $0.07 per contract vs. $0.30) does not misalign the cost of these transactions depending on the market participant because the Exchange would now not assess a fee in the case that PIXL Order is contra to other than the Initiating Order, which is not a Customer, and would pay the Customer a rebate in the case where the contra party is a Customer. Further, the Exchange notes that Specialist and Market Makers today pay a combined fee of $0.55 [39] to respond to a PIXL auction when the PIXL Order is a Customer order, whereas Broker-Dealers or Professionals responding to PIXL auctions pay only $0.30 per contract. Under the proposal, all non-Customer market participants would be treated in a uniform manner when responding to PIXL auctions. In order to remain competitive, the Exchange must implement fees and rebates that are competitive with pricing at other options exchanges that offer a similar auction opportunity. While the proposed fees would increase the differential between a non-Customer market participants that initiated the PIXL auction and a non-Customer market participants responding to the PIXL auction, the Exchange believes the fee differential is important in that it affords the Exchange the opportunity to pay Customers a rebate in order to provide the required incentives for market participants to continue to utilize PIXL for SPY options executions where the participant seeks price improvement.

Section I Complex Orders

Customer Complex Orders are becoming an increasingly important segment of options trading. The Exchange believes that reducing the current fee differential for Select Symbols in Section I and SPY options in new Section C from $0.05 to $0.02 per contact is reasonable because the Exchange believes that reducing Specialist and Market Maker Fees for Removing Liquidity in Complex Orders when such orders are directed to these seeks to incentivize market participants to direct and transact a greater number of Customer Complex Orders at the Exchange. Creating these incentives and attracting Customer Complex Orders to the Exchange, in turn, benefits all market participants through increased liquidity at the Exchange. A higher percentage of Customer Complex Orders leads to increased Complex Order auctions and better opportunities for price improvement.

The Exchange believes that reducing the current fee differential for Select Symbols and SPY options from $0.05 to $0.02 per contact is equitable and not unfairly discriminatory because Specialists and Market Makers have burdensome quoting obligations [40] to the market which do not apply to Firms, Professionals and Broker-Dealers. Also, Specialists and Market Makers that receive directed orders have higher quoting obligations [41] compared to other Specialists and Market Makers and therefore are assessed a lower fee when they transact with a Customer order that

[38] *See* note 20.

[39] The combined fee of $0.55 per contract is calculated by adding the transaction fee of $0.30 per contract in Section I and the PFOF of $0.25 per contract.

[40] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[41] *Id.*

was directed to them for execution as compared to Specialists and Market Makers. In addition, the Exchange believes that reducing the discount for directed orders will narrow the fee differential as between Specialists and Market Makers that receive directed orders and those that do not receive directed orders.

The Exchange's proposal to remove SPY from the list of Select Symbols in Section I is reasonable because the new pricing in Section C of the Pricing Schedule would now apply to SPY options. The Exchange's proposal to remove SPY from the list of Select Symbols in Section I is equitable and not unfairly discriminatory because the new pricing in Section C would apply uniformly to all market participants for SPY options just as the pricing in Section I would apply uniformly to all symbols noted in that section.

Section IV—PIXL Amendments

The Exchange's proposal to amend PIXL pricing at Section IV, Part A of the Pricing Schedule is reasonable because the Exchange is attempting to attract PIXL order flow by incentivizing members. The Exchange believes that this amendment will encourage market participants to transact a greater number of larger sized orders in PIXL. Today, the Exchange offers Firms the opportunity to reduce the PIXL Initiating Order Fee which is currently $0.07 or $0.05 per contract if a Firm that is a contra to a Customer PIXL Order transacts an order which exceeds 999 contracts. The Exchange now desires to incentivize all market participants that are assessed an Initiating Order Fee to transact large PIXL Orders (greater than 999 contracts) by expanding the reduction of the Initiating Order Fee to a Professional, Broker-Dealer, Specialist and Market Maker. The Exchange would offer all market participants, other than Customers who are not assessed an Initiating Order Fee, an incentive to transact large sized orders in PIXL.

The Exchange's proposal to amend PIXL pricing at Section IV, Part A of the Pricing Schedule is equitable and not unfairly discriminatory because the Exchange would uniformly provide all market participants that are assessed the Initiating Order Fee an opportunity to reduce the Initiating Order Fee to $0.00 per contract provided the requisite number of orders is transacted.

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 amend the Customer Rebate Program to increase certain rebates offered by the Exchange does not impose an undue burden on competition because all market participants may participate in the Customer Rebate Program. The Exchange's proposal to not pay rebates on SPY options in the Customer Rebate Program because the Exchange is proposing to offer rebates on SPY options as part of new Part C also does not impose an undue burden on competition because the Exchange is offering to pay Customer rebates on SPY options as part of a new pricing schedule to encourage market participants to transact a greater number of SPY options.

The Exchange believes that the proposed pricing for SPY options, which provides greater incentives to transact both SPY Simple and Complex Orders creates additional opportunity for all market participants to decrease cost and bring additional liquidity to the market by offering the Exchange an ability to provide rebates to Customers, Specialists and Market Makers. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants (Professionals, Firms and Broker-Dealers) recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The Exchange believes that not assessing fees or paying rebates when a market participant executes against an order for which the Exchange broadcast an order exposure alert in SPY options creates competition among market participants to remove liquidity from the Phlx Book. This competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of the pricing when transacting SPY options. The Exchange's proposal to not collect PFOF on SPY transactions likewise promotes competition in SPY by reducing costs to all market participants that pay PFOF.

The Exchange's proposal to reduce the PIXL Initiating Order fee for all market participants transacting SPY options promotes competition in this highly liquid option. The Exchange's proposal to increase the differential as between the Initiating Order Fee and the PIXL Order in SPY options is offset by the rebate that is offered to the Customer transacting SPY which in turn brings liquidity to the PIXL auction. The Exchange is proposing to not assess the PIXL Order that is contra to other than the Initiating Order in SPY options a fee except when contra to a Customer order because that is the only case where a rebate is paid to a Customer in PIXL. There is also the opportunity for Specialists and Market Makers to receive a Rebate To Add Liquidity when transacting SPY options. The Exchange does not believe the proposal creates an undue burden on competition, the increased fees when transacting PIXL Orders in SPY Options allow for the Exchange to pay Customer rebates which in turn brings necessary liquidity to the PIXL auction and promotes competition. Further, in 2013, Specialists and Market Makers represented 99.8% of responders to SPY PIXL auctions. Specialists and Market Makers were the contra party to a Customer order 97.7% of the time. Therefore, under the current pricing structure, the effective rate for Specialists and Market Makers responding to SPY PIXL orders was $0.5443, which means the effective differential today is $0.4943. The proposed SPY PIXL pricing actually reduces the effective differential among Broker-Dealers, which the Exchange believes enhances competition among Broker-Dealers, enriches the price discovery process and creates further price improvement opportunities for Customers.

With respect to reducing the Complex Order Fees for Removing Liquidity in Select Symbols and SPY options for orders directed to Specialists and Market Makers, it is important to note that Specialists and Market Makers are unaware of the identity of the contra-party at the time of the trade and are also required to execute at the best price, pursuant to Exchange Rules, against an order intended for them by an order flow provider in order to be assessed the reduced Complex Order Fee for Removing Liquidity. The Exchange is proposing to decrease the fee differential as between Specialists and Market Makers that receive directed orders and those that do not receive directed orders in Select Symbols and SPY. The Exchange believes that decreasing this fee differential does not create an undue burden on competition.

Today, PIXL pricing is proposed to incentivize Firms to bring Initiating Orders to a PIXL auction by offering an incentive to reduce the Initiating Order Fee. By expanding the opportunity to all market participants that pay an Initiating Order Fee to reduce those fees, the Exchange encourages competition among market participants to price improve the order.

The Exchange operates in a highly competitive market, comprised of eleven 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.[42] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2013–61 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–2013–61. 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–Phlx–2013–61 and should be submitted on or before July 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14686 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69764; File No. SR–NYSEMKT–2013–49]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Permit Traders Conducting Certain Futures and Options Trading on ICE Futures U.S. in Space Rented From the Exchange at 20 Broad Street To Access the IFUS Trading Floor Prior to 7 a.m. and on Days That the Exchange Is Closed Via the Exchange's 11 Wall Street Facilities and To Permit Additional IFUS Traders To Conduct Business on the IFUS Trading Floor

June 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 June 3, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit traders conducting certain futures and options trading on ICE Futures U.S. (''IFUS'')[4] in space rented from the Exchange at 20 Broad Street (the ''IFUS Trading Floor'') to access the IFUS Trading Floor prior to 7 a.m. and on days that the Exchange is closed via the Exchange's 11 Wall Street facilities and to permit additional IFUS traders to conduct business on the IFUS Trading Floor (together, the ''Proposal'').

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (''CFTC''). IFUS was formerly known as the New York Board of Trade (''NYBOT'').

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

On February 13, 2013, the Exchange filed a proposed rule change to relocate trading of certain futures and options contracts conducted on IFUS from rented space at the New York Mercantile Exchange (''NYMEX'') to trading space at 20 Broad Street, New York, New York, commonly known as the ''Blue Room'', and amend NYSE MKT Rule 6A, which defines the terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor'' (the ''Original Filing'').[5] The Original Filing stated that the IFUS traders relocating to 20 Broad Street (the ''IFUS Traders'') and their clerical employees would be prohibited from entering the Main Room, where most of the New York Stock Exchange LLC (''NYSE'') and NYSE MKT Equities Floor brokers and all NYSE and NYSE MKT Equities Designated Market Makers (''DMMs'') are located, as well as the NYSE Amex Options trading floor. Moreover, the Original Filing stated that the IFUS Traders can only utilize the 18 Broad Street entrance to access the Blue Room.

However, because the 18 Broad Street entrance does not open until 7 a.m., the Exchange proposes to clarify that the IFUS Traders may, on an as needed basis and only prior to 7 a.m., access the Blue Room via the Exchange's 11 Wall Street facilities, which would entail walking through the Main Room to access the Blue Room. Given that the IFUS Traders' Exchange-issued identification badges do not provide access to 11 Wall Street, any IFUS Trader wishing to access their workspace prior to 7 a.m. would need to request access and be approved by the Exchange. As noted, access would be limited to hours before the 18 Broad Street entrance opens at 7 a.m. Because the Exchange is not open for the transaction of business until 9:30 a.m.,[6] the Exchange does not believe that allowing one or more IFUS Traders to briefly cross the Main Room on the way to the Blue Room prior to 7 a.m., which is significantly prior to the Exchange's open, would pose any realistic risk that the IFUS Traders would be exposed to confidential customer order information or other confidential trading information.

To date, only one IFUS Trader has requested and been provided access before 7 a.m. following review and approval by NYSE Regulation and IFUS Market Regulation. As a condition of permitting access, IFUS Market Regulation advised the trader that access to the IFUS Trading Floor through the 11 Wall Street entrance is only permitted in the morning prior to 7 a.m. and that this is the only time the trader was permitted to cross through or be on the Main Floor. The trader was also reminded that access to and from the IFUS Trading Floor after 7:00 a.m. must be via the 18 Broad Street entrance. As proposed, any additional requests for access to the IFUS Trading Floor prior to 7 a.m. will be subject to the same restrictions.

In addition, the Exchange proposes to clarify that the IFUS Traders may access the Blue Room via the Exchange's 11 Wall Street facilities on days that the Exchange is closed.[7] The Exchange believes that there is no realistic risk that the IFUS Traders would be exposed to confidential customer order information or other confidential trading information on legal holidays when the Exchange is closed.

The Exchange also seeks to allow additional IFUS Traders and relevant support staff to conduct business on the IFUS Trading Floor in its new location. IFUS has received several requests from traders who previously traded coffee and sugar products on IFUS when it was located at NYMEX to resume trading on IFUS. The Exchange believes that it is appropriate to permit additional IFUS Traders and their support staff to relocate to the Blue Room pursuant to all of the conditions specified in Original Filing.

The additional IFUS Traders would be located with the other IFUS Traders in the Blue Room (which, as the Original Filing notes, contains privacy barriers consisting of eight foot walls providing visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders) and would be subject to the same restrictions on accessing the Blue Room described above and in the Original Filing. The names of the additional IFUS Traders would also be provided to the Financial Industry Regulatory Authority (''FINRA'') which conducts surveillance of the NYSE MKT and NYSE markets to enable FINRA to more readily identify any potentially violative trading involving the IFUS Traders.[8]

Any additional IFUS Traders would not trade any of the products traded on NYSE MKT, and there is extremely limited overlap in related products traded by the IFUS Traders and on the NYSE MKT. Moreover, even with additional traders conducting business in coffee and sugar products on the IFUS Trading Floor, the IFUS Traders overall will continue to execute a very small volume of predominantly cotton options. In light of these facts, the Exchange believes it is highly unlikely that any order handled by one of them could impact the price of any individual security traded on the Exchange. In this regard, the Exchange continues to believe that the pricing correlation between order flow in IFUS products and securities traded on NYSE MKT is tenuous at best and that it is extremely unlikely that information overheard by an equities Floor broker or an IFUS Trader could be used to benefit the broker's or trader's proprietary, personal or other customer trading.

Accordingly, the Exchange does not believe that permitting additional IFUS Traders to conduct business on the IFUS Trading Floor in the Blue raises any regulatory concerns.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative

[5] *See* Securities Exchange Act Release Nos. 68996 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR–NYSE–2013–13).

[6] NYSE MKT Rule 52 limits dealings on the Exchange to the hours during which the Exchange is open for the transaction of business, which NYSE MKT Rule 51 defines to include a daily trading session between the hours of 9:30 a.m. and 4:30 p.m.

[7] Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays.

[8] Providing the names of the IFUS Traders to FINRA will be for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity and the IFUS Traders will not be subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS as they are today.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal will permit the Exchange to allow additional IFUS Traders to utilize space on the trading floor within the existing regulatory framework at the Exchange, to efficiently and effectively conduct business in their respective area consistent with maintaining necessary distinctions between the two organizations. Moreover, the Proposal will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floor of the Exchange and additional IFUS Traders on the IFUS Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange the additional flexibility to maximize the use of its trading floor space.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–NYSEMKT–2013–49 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–NYSEMKT–2013–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–49 and should be submitted on or before July 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14684 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69761; File No. SR–FINRA–2013–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Discovery Guide Used in Customer Arbitration Proceedings

June 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 June 3, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 substantially prepared by FINRA. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

FINRA is proposing to amend the Discovery Guide (''Guide'') used in customer arbitration proceedings to provide general guidance on electronic discovery (''e-discovery'') issues and product cases and to clarify the existing provision relating to affirmations made when a party does not produce documents specified in the Guide. The proposed rule change fulfills FINRA's commitment to review the topics of e-discovery and product cases with the Discovery Task Force (''Task Force'') that FINRA established in 2011.[3] FINRA believes that the proposed revisions to the Guide will reduce the number and limit the scope of disputes involving document production in customer cases, thereby improving the arbitration process for the benefit of public investors, broker-dealer firms, and associated persons.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

Background

The Guide supplements the discovery rules contained in the FINRA Code of Arbitration Procedure for Customer Disputes (''Customer Code''). It includes an introduction which describes the discovery process generally, and explains how arbitrators should apply the Guide in arbitration proceedings. The introduction is followed by two Document Production Lists (Lists), one for firms/associated persons, and one for customers, which enumerate the documents that parties should exchange without arbitrator or staff intervention. The Guide only applies to customer arbitration proceedings, not to intra-industry cases.

As stated above, in 2011 FINRA updated the Guide and established the Task Force. To fulfill the commitment FINRA made to the SEC during the rulemaking process, the first topics that the Task Force discussed were e-discovery and product cases. The Task Force also reviewed concerns raised by forum users about the affirmation language in the Guide's introduction.

E-Discovery

FINRA considers electronic files to be documents within the meaning of the Guide. As part of the 2011 revisions, FINRA updated the Guide to expressly state that electronic files are documents within the meaning of the Guide and that arbitrators decide any disputes that arise about the form in which a party produces a document. Commenters on the proposed rule change asked FINRA for additional guidance on e-discovery. The Task Force discussed e-discovery over numerous meetings and recommended that FINRA amend the Guide to include general guidelines for arbitrators to consider when deciding disputes relating to the form of production for electronic documents.

FINRA is proposing to amend the Guide's introduction to state that parties are encouraged to discuss the form in which they intend to produce documents and, whenever possible, to agree to the form of production. The provision would require parties to produce electronic files in a ''reasonably usable format.'' The term reasonably usable format would refer, generally, to the format in which a party ordinarily maintains a document, or to a converted format that does not make it more difficult or burdensome for the requesting party to use during a proceeding.

The proposed guidance would also state that when arbitrators are resolving contested motions about the form of document production, they should consider the totality of the circumstances, including:

- For documents in a party's possession or custody, whether the chosen form of production is different from the form in which a document is ordinarily maintained;
- For documents that must be obtained from a third party (because they are not in a party's possession or custody), whether the chosen form of production is different from the form in which the third party provided it; and
- For documents converted from their original format, a party's reasons for choosing a particular form of production; how the documents may have been affected by the conversion to a new format; and whether the requesting party's ability to use the documents is diminished by any change in the documents' appearance, searchability, metadata, or maneuverability.

The third factor would advise arbitrators to consider, among other things, whether a party's ability to use a converted document is diminished by a change in the documents' appearance, searchability, metadata, or maneuverability. If the SEC approves the proposed rule change, FINRA intends to provide arbitrators with guidance on the terms ''appearance,'' ''searchability,'' ''metadata,'' and ''maneuverability'' in training materials to be posted on FINRA's Web site. FINRA would include the substance of the following descriptions of each term in the training materials:

- Appearance—In many instances, converting a document from its ''native format'' (the form in which the electronic file was created) to a hard copy or static format will not affect the appearance of the document. However, that is not always the case. If, for example, a party prints a Microsoft Word® document (''Word document'') and produces it in hard copy, it will look the same. However, a party might configure some native files to print only certain portions of the document. For example, a party could set the print area on a Microsoft Excel® spreadsheet (''Excel spreadsheet'') to print only certain rows or columns. A hard copy print-out of such an Excel spreadsheet would contain less information than the native file. Similarly, a hard copy print-out of a Microsoft PowerPoint® presentation may not contain speaker's notes that appear in the electronic file.

[3] In 2011, FINRA received SEC approval to update the Guide (*See* Securities Exchange Act Rel. No. 64166 (April 1, 2011), 76 **Federal Register** 19155 (April 6, 2011), File No. SR–FINRA–2010–035). As part of the rule making process, FINRA agreed to establish the Task Force under the auspices of the National Arbitration and Mediation Committee (NAMC). FINRA charged the Task Force with reviewing substantive issues relating to the Guide on a periodic basis to keep the Guide current as products change and new discovery issues arise. FINRA pledged to ask the Task Force to review e-discovery issues and product cases.

• Searchability—Converting a native file may affect the searchability of the document. If a party prints a Word document and produces it in hard copy form, the document is not electronically searchable. In its native form, the contents of a Word document can be searched electronically for key words or information. Static electronic formats may or may not be searchable, depending on how they are converted.

• Metadata—Converting a native file may also affect the availability of metadata. Metadata describes how, when, and by whom electronically stored information (''ESI'') was collected, created, accessed, or modified, and how it is formatted. For example, an email contains many pieces of metadata, such as the date and time it was sent, and information about who sent it, and who received it. It is possible to convert a native file to a static format and keep all the metadata attached. It is also possible to produce some, but not all, metadata associated with a native file.

• Maneuverability—Converting a native file into another format may affect the maneuverability of a document—the party's ability to manipulate data using the native application. For example, an Excel spreadsheet in its native format can be sorted and filtered for data and the user can examine embedded formulas and references. If the Excel spreadsheet is printed or converted to certain formats, that ability is lost.

FINRA recognizes that parties have legitimate reasons for converting documents into different formats, and for requesting particular document formats. For example, a firm may need to convert a document into a particular format to comply with legal requirements to redact personal confidential information, such as customer Social Security numbers. A customer may need a document to contain metadata in order to establish when a broker learned specific information. FINRA believes that requiring production in a reasonably usable format and providing general guidance on e-discovery would provide arbitrators with the flexibility to tailor document production to the needs of each case.

In conjunction with the proposed guidance on e-discovery, FINRA is proposing to amend the Guide's discussion on cost or burden of production. Currently, the Guide states that if the arbitrators determine that the document is relevant or likely to lead to relevant evidence, they should consider whether there are alternatives that can lessen the cost or burden impact, such as narrowing the time frame or scope of an item on the Lists, or determining whether another document can provide the same information. FINRA is mindful of the costs associated with e-discovery and is proposing to amend the cost or burden of production provision to advise arbitrators that they may order a different form of production if it would lessen the cost or burden impact of producing electronic documents. FINRA believes the additional guidance would raise arbitrator awareness of alternative ways to help parties to resolve an e-discovery dispute in a cost effective manner.

Product Cases

In its 2011 order approving revisions to the Guide, the SEC noted that several commenters raised concerns that the revised Guide does not sufficiently address product cases, as described below.[4] In response to these concerns, FINRA agreed to ask the Task Force to consider the topic. The Task Force recognized that product cases are unique customer cases that differ from other customer cases in several ways and recommended that FINRA add general guidelines to the Guide which describe how product cases are different from other customer cases and which outline the types of documents that parties typically request in such cases.

FINRA is proposing to amend the Guide's introduction to add guidance on product cases. The Guide would state that a product case is one in which one or more of the asserted claims centers around allegations regarding the widespread mismarketing or defective development of a specific security or specific group of securities. The Guide would enumerate some of the ways that product cases are different from other customer cases, including that:

• The volume of documents tends to be much greater;

• Multiple investor claimants may seek the same documents;

• The documents are not client specific;

• The product at issue is more likely to be the subject of a regulatory investigation;

• The cases are more likely to involve a class action with documents subject to a mandatory hold;[5]

• The same documents may have been produced to multiple parties in other cases involving the same security or to regulators; and

• Documents are more likely to relate to due diligence analyses performed by persons who did not handle the claimant's account.

The Guide would explain that the two existing Lists may not provide all of the documents parties typically request in a product case relating to, among other things, a firm's: Creation of a product; due diligence reviews of a product; training on or marketing of a product; or post-approval review of a product. The text would emphasize that, in a product case, parties are not limited to the documents enumerated in the Lists. It would also emphasize that the Customer Code provides a mechanism for parties to seek additional documents. Finally, the Guide would explain that parties do not always agree on whether a case is a product case, and the arbitrators may ask the parties to explain their rationale for asserting that a case is, or is not, a product case.

FINRA staff considered adding an item to the firm/associated person List that would enumerate specific documents that firms/associated persons would be required to produce when a customer alleged that a claim was a product case. Staff was mindful of the economic impact on firms that is associated with the larger volume of documents in product cases and rejected that approach. Instead, FINRA is proposing general guidelines on the types of documents that customers typically request in products cases because general guidelines would encourage parties to discuss their discovery needs and would encourage arbitrators to be flexible when making a determination on whether to order additional production.

Affirmations

The Guide provides for affirmations when a party indicates that there are no responsive documents in the party's possession, custody, or control. The affirmation language provides that, upon the request of a party seeking documents, the customer, or appropriate person at the firm who has knowledge, must state that the party conducted a good faith search for the documents, describe the extent of the search, and state that based on the search there are no requested documents. Forum users raised concerns that the language creates a ''loop hole'' in which parties might assert that they are only required to provide an affirmation relating to production when *no* documents are produced, as opposed to situations where there is partial production. Some users were also concerned that parties might affirm that they did not find documents where they looked as opposed to looking for documents in all appropriate places. The Task Force

[4] *Supra* Note 3.

[5] A mandatory hold is an act by an entity to preserve documents and electronic information relevant to a lawsuit or government investigation.

discussed the forum users' concerns and recommended that FINRA amend the affirmation language to add clarity to the provision.

To respond to these concerns, FINRA is proposing to amend the affirmation language to make it clear that a party may request an affirmation when an opposing party makes only a partial production. The revised language would provide that, if a party does not produce a document specified in the Document Production Lists, upon the request of the party seeking the document that was not produced, the customer or the appropriate person at the brokerage firm who has knowledge must affirm in writing that the party conducted a good faith search for the requested document. FINRA is also proposing to require a party to state the sources searched in the affirmation. FINRA believes the proposed revision would add clarity to the affirmation text and reduce disputes over requests for affirmations.

Clarifying Amendments

FINRA is proposing to add additional sub-headings to the Guide's introduction to break the introduction into distinct sections that address specific concerns. The new headings would be: Flexibility in Discovery; Cost or Burden of Production; Requests for Additional Documents; Form of Production; and Product Cases. FINRA believes the new headings will add clarity to the Guide.

FINRA is proposing to move the sentence that reads: ''[w]here additional documents are relevant in a particular case, parties can seek them in accordance with the time frames provided in the 12500 series of rules'' to the section that would be titled Requests for Additional Documents. FINRA also proposes to add the phrase ''may be'' before relevant to reflect that relevancy is not always established at the time that a party requests additional documents. Finally, FINRA proposes to amend the sentence in that paragraph that states that ''[a]rbitrators must use their judgment in considering requests for additional documents and may not deny document requests on the grounds that the documents are not expressly listed in the Discovery Guide'' to add the term ''solely'' before the phrase ''on the grounds.'' FINRA believes that adding ''solely'' adds clarity to the Guide by ensuring that arbitrators understand that they should not automatically sustain an objection to production because a document is not expressly listed in the Guide.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will reduce the number and limit the scope of disputes involving document production in customer cases, thereby improving the arbitration process for the benefit of public investors, broker-dealer firms, and associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA considered the potential impact of the proposed rule change on efficiency, competition, and capital formation. FINRA is concerned that production relating to e-discovery and product cases can be time-consuming and costly for parties. The proposed revisions to the Guide would provide parties and arbitrators with guidance on how to handle e-discovery matters and document production relating to product cases in a flexible, efficient, and cost effective manner. The proposal would also clarify the provisions relating to affirmations and should reduce the inefficiency associated with disputes concerning affirmations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–024 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–FINRA–2013–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2013–024 and should be submitted on or before July 11, 2013.

[6] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14683 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69763; File No. SR–NYSE–2013–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Traders Conducting Certain Futures and Options Trading on ICE Futures U.S. in Space Rented From the Exchange at 20 Broad Street To Access the IFUS Trading Floor Prior to 7 a.m. and on Days That the Exchange Is Closed Via The Exchange's 11 Wall Street Facilities and To Permit Additional IFUS Traders To Conduct Business on the IFUS Trading Floor

June 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 June 3, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit traders conducting certain futures and options trading on ICE Futures U.S. (''IFUS'')[4] in space rented from the Exchange at 20 Broad Street (the ''IFUS Trading Floor'') to access the IFUS Trading Floor prior to 7 a.m. and on days that the Exchange is closed via the Exchange's 11 Wall Street facilities and to permit additional IFUS traders to conduct business on the IFUS Trading Floor. 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

On February 13, 2013, the Exchange filed a proposed rule change to relocate trading of certain futures and options contracts conducted on IFUS from rented space at the New York Mercantile Exchange (''NYMEX'') to trading space at 20 Broad Street, New York, New York, commonly known as the ''Blue Room'', and amend NYSE Rule 6A, which defines the terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor'' (the ''Original Filing'').[5] The Original Filing stated that the IFUS traders relocating to 20 Broad Street (the ''IFUS Traders'') and their clerical employees would be prohibited from entering the Main Room, where most of the NYSE and NYSE MKT LLC (''NYSE MKT'') Equities Floor brokers and all NYSE and NYSE MKT Equities Designated Market Makers (''DMMs'') are located, as well as the NYSE Amex Options trading floor. Moreover, the Original Filing stated that the IFUS Traders can only utilize the 18 Broad Street entrance to access the Blue Room.

However, because the 18 Broad Street entrance does not open until 7 a.m., the Exchange proposes to clarify that the IFUS Traders may, on an as needed basis and only prior to 7 a.m., access the Blue Room via the Exchange's 11 Wall Street facilities, which would entail walking through the Main Room to access the Blue Room. Given that the IFUS Traders' Exchange-issued identification badges do not provide access to 11 Wall Street, any IFUS Trader wishing to access their workspace prior to 7 a.m. would need to request access and be approved by the Exchange. As noted, access would be limited to hours before the 18 Broad Street entrance opens at 7 a.m. Because the Exchange is not open for the transaction of business until 9:30 a.m.,[6] the Exchange does not believe that allowing one or more IFUS Traders to briefly cross the Main Room on the way to the Blue Room prior to 7 a.m., which is significantly prior to the Exchange's open, would pose any realistic risk that the IFUS Traders would be exposed to confidential customer order information or other confidential trading information.

To date, only one IFUS Trader has requested and been provided access before 7 a.m. following review and approval by NYSE Regulation and IFUS Market Regulation. As a condition of permitting access, IFUS Market Regulation advised the trader that access to the IFUS Trading Floor through the 11 Wall Street entrance is only permitted in the morning prior to 7 a.m. and that this is the only time the trader was permitted to cross through or be on the Main Floor. The trader was also reminded that access to and from the IFUS Trading Floor after 7:00 a.m. must be via the 18 Broad Street entrance. As proposed, any additional requests for access to the IFUS Trading Floor prior to 7 a.m. will be subject to the same restrictions.

In addition, the Exchange proposes to clarify that the IFUS Traders may access the Blue Room via the Exchange's 11 Wall Street facilities on days that the Exchange is closed.[7] The Exchange believes that there is no realistic risk that the IFUS Traders would be exposed to confidential customer order information or other confidential trading information on legal holidays when the Exchange is closed.

The Exchange also seeks to allow additional IFUS Traders and relevant support staff to conduct business on the IFUS Trading Floor in its new location. IFUS has received several requests from traders who previously traded coffee and sugar products on IFUS when it was located at NYMEX to resume trading on IFUS. The Exchange believes that it is appropriate to permit additional IFUS Traders and their support staff to

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (''CFTC''). IFUS was formerly known as the New York Board of Trade (''NYBOT'').

[5] *See* Securities Exchange Act Release Nos. 68996 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR–NYSE–2013–13).

[6] NYSE Rule 52 limits dealings on the Exchange to the hours during which the Exchange is open for the transaction of business, which NYSE Rule 51 defines to include a daily trading session between the hours of 9:30 a.m. and 4:30 p.m.

[7] Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays.

relocate to the Blue Room pursuant to all of the conditions specified in Original Filing.

The additional IFUS Traders would be located with the other IFUS Traders in the Blue Room (which, as the Original Filing notes, contains privacy barriers consisting of eight foot walls providing visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders) and would be subject to the same restrictions on accessing the Blue Room described above and in the Original Filing. The names of the additional IFUS Traders would also be provided to the Financial Industry Regulatory Authority (''FINRA'') which conducts surveillance of the NYSE and NYSE MKT markets to enable FINRA to more readily identify any potentially violative trading involving the IFUS Traders.[8]

Any additional IFUS Traders would not trade any of the products traded on NYSE, and there is extremely limited overlap in related products traded by the IFUS Traders and on the NYSE. Moreover, even with additional traders conducting business in coffee and sugar products on the IFUS Trading Floor, the IFUS Traders overall will continue to execute a very small volume of predominantly cotton options. In light of these facts, the Exchange believes it is highly unlikely that any order handled by one of them could impact the price of any individual security traded on the Exchange. In this regard, the Exchange continues to believe that the pricing correlation between order flow in IFUS products and securities traded on NYSE is tenuous at best and that it is extremely unlikely that information overheard by an equities Floor broker or an IFUS Trader could be used to benefit the broker's or trader's proprietary, personal or other customer trading.

Accordingly, the Exchange does not believe that permitting additional IFUS Traders to conduct business on the IFUS Trading Floor in the Blue raises any regulatory concerns.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal will permit the Exchange to allow additional IFUS Traders to utilize space on the trading floor within the existing regulatory framework at the Exchange, to efficiently and effectively conduct business in their respective area consistent with maintaining necessary distinctions between the two organizations. Moreover, the Proposal will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floor of the Exchange and additional IFUS Traders on the IFUS Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange the additional flexibility to maximize the use of its trading floor space.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–38 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–NYSE–2013–38. 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/*

[8] Providing the names of the IFUS Traders to FINRA will be for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity and the IFUS Traders will not be subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS as they are today.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(2)(B).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–38 and should be submitted on or before July 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14687 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69762; File No. SR–FINRA–2013–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Code of Arbitration Procedure for Customer Disputes Concerning Panel Composition

June 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 June 3, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 substantially prepared by FINRA. 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 Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 12403 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') to simplify arbitration panel selection in cases with three arbitrators. Under the proposed rule change, FINRA would no longer require a customer to elect a panel selection method, and parties in all customer cases with three arbitrators would get the same selection method. FINRA would provide all parties with lists of ten chair-qualified public arbitrators, ten public arbitrators, and ten non-public arbitrators. FINRA would permit the parties to strike four arbitrators on the chair-qualified public list and four arbitrators on the public list. However, any party could select an all-public arbitration panel by striking all of the arbitrators on the non-public list.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

Background

Under the Customer Code, parties in arbitration participate in selecting the arbitrators who serve on their cases. Until January 31, 2011, the Customer Code contained one panel composition method for cases with three arbitrators (generally cases with claims of more than $100,000).[3] This method provided for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator. To begin the selection process, FINRA used the computerized Neutral List Selection System (''NLSS'') to generate random lists of ten chair-qualified public arbitrators, ten public arbitrators, and ten non-public arbitrators. The parties selected their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permitted the parties to strike the names of up to four arbitrators from each list. The parties then ranked the arbitrators remaining on the lists in order of preference. FINRA appointed the panel from among the names remaining on the lists that the parties returned.

Customer advocates argued that the mandatory inclusion of a non-public arbitrator in a three-arbitrator case raised a perception that FINRA Dispute Resolution's forum was not fair to customers. In order to address this perception, FINRA sought and received SEC approval to implement a new panel composition rule for customer cases with three arbitrators.[4] Under current Rule 12403, customers may choose between two panel composition methods. The first method, the composition rules for majority public panel (Majority Public Panel Option), provides for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator. The Majority Public Panel Option is the same panel composition method that was in place prior to February 1, 2011, and it operates as described above.

The second method, the composition rules for optional all public panel (All Public Panel Option), allows any party to select an arbitration panel consisting of three public arbitrators. Under this provision, FINRA sends the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public Panel Option, but FINRA allows each party to strike any or *all* of the arbitrators on the non-public arbitrator list. FINRA will not appoint a non-public arbitrator if the parties individually or collectively strike all the arbitrators appearing on the non-public

[3] *See* FINRA Rule 12401 which provides that if the amount of a claim is more than $100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

[4] *See* Securities Exchange Act Rel. No. 63799 (January 31, 2011), 76 **Federal Register** 6500 (February 4, 2011), (File No. SR–FINRA–2010–053) and *Regulatory Notice* 11–05 (February 2011).

list or if all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason. In either instance, FINRA will select the next highest-ranked *public* arbitrator to complete the panel. By striking all the arbitrators on the non-public list, any party can ensure that the panel will have three public arbitrators.

Under Rule 12403, a customer may choose a panel composition method in the statement of claim (or accompanying documentation) or at any time up to 35 days from service of the statement of claim. In the absence of an affirmative choice by the customer, the Majority Public Panel Option is the default composition method. To ensure that the customer understands the options available, FINRA notifies the customer in writing that the customer may elect the All Public Panel Option within 35 days from service of the statement of claim. In its letter to the customer, FINRA explains how each panel composition method works.

Customer Elections and Award Results

Since implementation of the All Public Panel Option, customers in approximately three-quarters of eligible cases have chosen the All Public Panel Option.[5] Customers using the Majority Public Panel Option have done so by default 77 percent of the time, rather than by making an affirmative choice (i.e., these customers did not make an election in their statement of claim or accompanying documentation, and did not respond to the follow-up letter FINRA sent).

As of March 31, 2013, customers selecting the All Public Panel Option have chosen to strike all of the non-public arbitrators in 66 percent of the cases during the ranking process. Customers have ranked one or more non-public arbitrators in 34 percent of cases and four or more in 13 percent of cases proceeding under the All Public Panel Option. Industry parties have ranked one or more non-public arbitrators in 97 percent of cases and have ranked four or more non-public arbitrators in 90 percent of cases. FINRA has been tracking the results of arbitration awards decided by all public panels and majority public panels since implementation of the rule change. For the period February 1, 2011 through March 31, 2013, investors prevailed 49 percent of the time in cases decided by all public panels and 34 percent of the time in cases decided by majority public panels.[6]

Proposal To Use One Panel Composition Method at the Forum

Based on FINRA's experience with having two panel composition methods, FINRA is proposing to amend Rule 12403 to use one panel composition method in all customer cases. The provisions in the All Public Panel Option as currently codified, with one clarifying change, would be the panel composition method for the forum. The clarifying change relates to striking and ranking arbitrators. Currently, Rule 12403(d)(3)(B)(i) states that ''[e]ach separately represented party may strike up to four of the arbitrators from the chairperson and public arbitrator lists for any reason by crossing through the names of the arbitrators.'' FINRA is proposing to add clarity to that provision by amending it to state that ''[e]ach separately represented party may strike up to four of the arbitrators from the chairperson list and up to four of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators.''

FINRA believes that forum users would benefit by having one panel composition method for a number of reasons. First, having one panel composition method would simplify the arbitrator selection process for all parties and FINRA staff while leaving in place the method affirmatively chosen by customers in approximately three-quarters of customer cases. Second, it would ensure that every party has an opportunity to see the list of non-public arbitrators and rank or strike any or all of the arbitrators on the list. Third, the proposal would ensure that customers would not miss the opportunity to select an all public panel because of the inherent complexity of the rule. In its 2011 order approving adoption of the All Public Panel Option, the SEC noted commenter concerns that customers without attorneys, or attorneys new to the practice of securities arbitration, might not elect the All Public Panel Option within the prescribed deadline, or might not appreciate the significance of making such an election.[7] At that time, FINRA responded by implementing the notification procedure discussed earlier. The proposed rule change would further ameliorate the commenter concerns.

Cross References

To implement the proposal, FINRA is proposing to correct several cross references in the Customer Code.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that having one panel composition method, instead of the current two methods, would improve user experience at the forum. All parties would be subject to the same rules; there would be no confusion about panel composition; and less experienced parties would not be in the position to make an election that could inadvertently limit their options. For firms, one panel composition method brings certainty to the process and continues to assure that all parties have an opportunity to review the non-public arbitrator list.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA considered the potential impact of the proposed rule change on efficiency, competition, and capital formation. FINRA believes that simplifying the arbitrator selection process will improve the efficiency of administering cases at the forum and would not increase the burden on parties to the arbitration.

The proposal would improve efficiency at the forum because FINRA staff would no longer be required to notify the customer in writing that the customer may elect the All Public Panel Option and would not have to wait for the 35-day period to expire before generating arbitrator lists. Improved efficiency may reduce expenses at the forum benefiting both investors and FINRA members.

In addition, the proposed rule change would not increase the burden of panel selection on the parties. FINRA would continue to send the parties the same three lists of arbitrators and the task of reviewing and analyzing arbitrator backgrounds would be the same.

[5] The current panel composition rule went into effect on February 1, 2011. The percentage noted is for the period between February 1, 2011 and March 31, 2013.

[6] The results for awards issued by majority public panels include both instances where a customer selected the Majority Public Panel Option (affirmatively or by default), and instances where the parties selected a non-public arbitrator under the All-Public Panel Option.

[7] *Supra* note 3.

[8] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–023 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–FINRA–2013–023. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2013–023 and should be submitted on or before July 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14682 Filed 6–19–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; iTrackr Systems, Inc.

June 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of iTrackr Systems, Inc. (''iTrackr'') because it has not filed a periodic report since it filed its Form 10–Q for the period ending September 30, 2012, filed on November 6, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of iTrackr. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of iTrackr is suspended for the period from 9:30 a.m. EDT, June 18, 2013 through 11:59 p.m. EDT, on July 1, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14830 Filed 6–18–13; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8355]

30-Day Notice of Proposed Information Collection: Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor Under Age 16

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATE(S): Submit comments directly to the Office of Management and Budget (OMB) up to July 22, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC).
- *Form Number:* DS–5525.

• *Respondents:* Individuals or Households.

• *Estimated Number of Respondents:* 115,050 respondents per year.

• *Estimated Number of Responses:* 115,050 responses per year.

• *Average Time per Response:* 30 minutes or 0.5 hour.

• *Total Estimated Burden Time:* 57,525 hours per year.

• *Frequency:* On occasion.

• *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The information collected on the DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16'', is used in conjunction with the DS–11, ''Application for a U.S. Passport''. The DS–5525 can serve as the statement describing exigent or special family circumstances, which is required if written consent of the non-applying parent or guardian cannot be obtained when the passport application is executed for a minor under age 16. The statement must explain the reason for the request.

The legal authority permitting this information assists the U.S. Department of State to administer the regulations in 22 CFR 51.28 requiring that both parents and/or any guardian consent to the issuance of a passport to a minor under age 16, except where one parent has sole custody or certain exceptions apply. This regulation was mandated by Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations authorization Act, Fiscal Year 2000 and 2001 (enacted by Pub. L. 106–113, Div. B, Section 1000 (a)(7)), and helps to prevent international child abduction, child trafficking, and other forms of passport fraud.

Methodology:

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16''. Passport applicants can either download the DS–5525 from the internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's DS–11, ''Application for a U.S. Passport''.

Additional Information:

Under the currently approved OMB collection 1405–0129, the DS 3053 collects both the Statement of Consent and the Statement of Exigent/Special Family Circumstances. However, the proposed collection will request this information using two separate forms to ensure that we more clearly communicate to the public what is and what is not a special family circumstance. Separating out the forms also allows the passport specialist to more clearly control and adjudicate those cases that do not qualify as a special family circumstance:

• DS–3053, ''Statement of Consent: Issuance of a Passport to a Minor under Age 16,'' and

• DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a Passport to a Minor under Age 16.''

• In addition to general format changes, an oath will be placed onto the proposed DS–5525 form. The oath is located above the signature line on Page 2 of the form and states: ''OATH: I declare under penalty of perjury that all statements made in this supporting document are true and correct.''

Dated: June 7, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–14665 Filed 6–19–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0092]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 24 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 28, 2013. Comments must be received on or before July 22, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2011–0092], using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement

page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 24 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 24 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Keith E. Allstot (WA)
Christopher L. Bagby (VA)
Jan M. Bernath (OH)
Joseph L. Butler (IN)
Shawn Carroll (OK)
Erik R. Davis (GA)
Walter C. Dean, Sr. (AL)
John C. DiMassa (WA)
John E. Edler, III (DE)
Saul E. Fierro (AZ)
Mark T. Gileau (CT)
Robert A. Goerl, Jr. (PA)
Peter D. Gouge (IA)
Eric M. Grayson (KY)
Alan D. Harberts (IA)
Thomas M. Harris (MI)
Paul M. Hinkson (TN)
Ellie L. Murphree (AL)
Michael P. Passmore (FL)
Wendell S. Sehen (OH)
Gary E. Valentine (OH)
Kevin W. Van Arsdol (CO)
Charles Van Dyke (WI)
Harlon C. VanBlaricom (MN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 24 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (76 FR 25766; 76 FR 37885). Each of these 24 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 22, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 24 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: June 12, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–14716 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0017]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 23 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective June 20, 2013. The exemptions expire on June 20, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On April 26, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 23 individuals and requested comments from the public (78 FR 24795). The public comment period closed on May 28, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 23 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 23 applicants have had ITDM over a range of 1 to 22 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 26, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized

Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA exempts Willie J. Brock (MO), Kenneth L. Bunn (OH), Robert S. Fow (AR), Kevin J. Fuller (MI), Eliazar M. Gonzalez (WA), John M. Hawk (MN), Michael J. Makwinski (NJ), Ralph W. Middaugh (PA), Michael J. Moynihan (NH), Juan F. Ortega (VA), Fernand L. Poulin (NH), James A. Pruitt (GA), Tony E. Pullen (IN), Michael M. Sanchez (NM), Nathaniel Scales, Jr. (DE), Ronald L. Schmidt (IL), Michael Schrock, III (TN), Jimmy W. Scroggins (AR), Leonard R. Smith (WA), Mark A. Stromberg (MN), Daniel J. Wagner (TX), Andrew J. White (IA), and Michael D. Ziegler (PA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 12, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–14720 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0016]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective June 20, 2013. The exemptions expire on June 20, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On April 16, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (78 FR 22599). The public comment period closed on May 16, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 16 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 16 applicants have had ITDM over a range of 1 to 25 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 16, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows

the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Joseph J. Black (PA), Donald D. Boomgaarn (NE), Hilary C. Clarke (NC), Roger S. Davis (PA), Edgar I. Duque (NY), Kevin D. Gentes (IL), Roger J. Huffsmith (WA), Joel M. Jock (VA), James S. Marunczak (PA), William A. Nearhood (PA), Charles E. Peck (AL), Joseph Sawicki, III (NY), Michael Steinman (PA), Christopher T. Thieneman (KY), Matthew A. Waller (WA), and Lucas P. Walth (ND) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 12, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–14718 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0026]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 7 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective June 20, 2013. The exemptions expire on June 20, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On April 16, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 22598). That notice listed 7 applicants' case histories. The 7 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 7 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye

without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 7 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, a macular pucker, a scarred corneal retinal detachment, toxoplasmosis, a prosthetic eye, and choroidal melanoma. In most cases, their eye conditions were not recently developed. Four of the applicants were either born with their vision impairments or have had them since childhood.

The three individuals that sustained their vision conditions as adults have had them for a period of 8 to 21 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 7 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 22 years. In the past 3 years, none of the drivers was involved in crashes but one was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 16, 2013 notice (78 FR 22598).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 7 applicants, none of the drivers was involved in a crash and one was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in

interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 7 applicants listed in the notice of April 16, 2013 (78 FR 22598).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 7 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 7 exemption applications, FMCSA exempts Fred Boggs (WV), James M. Del Sasso (IL), Stephen R. Dykstra (WI), Troy A. Gray (MI), Darryl W. Hardy (AL), George E. Mulherin, III (PA), and Nathan G. Pettis (FL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 10, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–14717 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on September 20, 2011 (**Federal Register**/Vol. 76, No. 182/pp. 58341–58342).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Eric Traube at the National Highway Traffic Safety Administration, Office of Human-Vehicle Performance Research (NVS–331), Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590. Mr. Traube's phone number is 202–366–5673. His email address is *eric.traube@dot.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127–0669.

Title: National Survey of Driver Attitudes and Opinions of Advanced In-vehicle Alcohol Detection Systems.

Form No.: NHTSA Form 1157.

Type of Review: Revision.

Respondents: Randomly selected members of the general public ages 21 and older from across the United States will be surveyed by telephone. Participation by all respondents would be voluntary and anonymous.

Estimated Number of Respondents: 1,025.

Estimated Time per Response: 15 minutes.

Total Estimated Annual Burden Hours: 256 hours 15 minutes (1,000 interviews plus 25 pilot interviews each averaging 15 minutes).

Frequency of Collection: One time.

Abstract: In a continuing effort to reduce the adverse consequences of alcohol-impaired driving, NHTSA in conjunction with the Automotive Coalition for Traffic Safety (ACTS) is undertaking research and development to explore the feasibility of, and public policy challenges associated with, use of in-vehicle alcohol detection technology. The agency believes that use of vehicle-based alcohol detection technologies could help to significantly reduce the number of alcohol-impaired driving crashes, deaths, and injuries by preventing drivers from driving while their blood alcohol concentration (BAC) is at or above the legal limit. In 2008, ACTS and NHTSA entered into a 5-Year Cooperative Agreement to ''explore the feasibility, the potential benefits of, and the public policy challenges associated with a more widespread use of unobtrusive technology to prevent drunk driving.'' The goal of the Driver Alcohol Detection System for Safety (DADSS) project is, through a step-by-step, data-driven process, to develop and test prototypes that may be considered for vehicle integration thereafter.

As technology development progresses and decisions are being made about best practices for integrating such technology into vehicles, NHTSA is soliciting public opinions about the proposed in-vehicle alcohol detection devices. Optimization of the effectiveness of the technology and public acceptance of it as a safety enhancement once deployed will depend on the extent to which public attitudes are taken into account during the development process. OMB previously approved focus groups with licensed drivers to provide an initial understanding of public preferences concerning advanced alcohol detection technology. In order to provide a more complete understanding of driver preferences, NHTSA is proposing to conduct a nationally representative telephone survey of drivers. Interviews would be completed with 1,000 licensed

drivers randomly selected from the 50 States and the District of Columbia. The survey would be composed of both a landline sample and a smaller cell phone sample selected from separate sampling frames. The drivers would have the developing in-vehicle alcohol sensing technology systems described to them, and asked a series of questions to obtain their reactions to the systems and their possible installation in new vehicles. In conducting the telephone interviews, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. Each driver in the sample would be interviewed a single time. No information would be collected that could be used to identify any respondent.

NHTSA and ACTS will use the information from the proposed telephone survey in decision making regarding integration of the technology under investigation into a vehicle.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: June 17, 2013.

Nathaniel Beuse,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2013–14706 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

CDFI Bond Guarantee Program; Correction

AGENCY: Community Development Financial Institutions Fund, U.S. Department of the Treasury.

ACTION: Notice of Request for Proposals for Master Servicer/Trustee; correction.

SUMMARY: The Community Development Financial Institutions (CDFI) Fund, a wholly owned government corporation within the U.S. Department of the Treasury, is seeking proposals from entities interested in serving as the Master Servicer/Trustee for the CDFI Bond Guarantee Program, which was authorized under the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). The version of the Notice of Request for Proposal published on June 14th, 2013 incorrectly stated the address to which applicants must submit printed copies delivered by commercial carrier. This correction states the appropriate address to which applicants must submit printed copies if delivered by commercial carrier.

FOR FURTHER INFORMATION CONTACT: Lisa M. Jones, Program Manager, CDFI Bond Guarantee Program, by mail to the CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220; by email to *bgp@cdfi.treas.gov;* or by facsimile at (202) 508–0090 (this is not a toll free number). Information regarding the CDFI Fund and the CDFI Bond Guarantee Program may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Correction

In the **Federal Register** of June 14, 2013, in FR Doc. 2013–14157, on page 36031, in the second column, correct III. Submission of Proposals, paragraph A to read as follow:

Any organization wishing to propose to serve as the Master Servicer/Trustee (an Offeror) must submit a proposal to the CDFI Fund in the following format: no more than 40 single-sided pages; double spaced; 12 font size; Arial, Calibri, or Times New Roman font. The Offeror may choose how to allocate the 40 pages of narrative to address the evaluation criteria listed below. Organizations may also submit an appendix of no more than 25 pages of resumes, charts, graphs, and other illustrative materials. Organizations must submit: One (1) electronic copy of the proposal materials in Microsoft Word or Adobe PDF format by email to *bgp@cdfi.treas.gov* and five (5) printed, color copies of the proposal materials either: (i) By mail to the attention of Lisa Jones, Program Manager, CDFI Bond Guarantee Program, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, or (ii) by commercial carrier to the attention of Lisa Jones, Program Manager, CDFI Bond Guarantee Program, CDFI Fund, 1801–6215, JBAB, 250 Murray Lane SW., Building 410/Door 123, Washington, DC 20222.

Dated: June 17, 2013.

Dennis Nolan,

Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 2013–14738 Filed 6–19–13; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection: Comment Request for Form 1099–S

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 1099–S, Proceeds From Real Estate Transactions.

DATES: Written comments should be received on or before August 19, 2013 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 Kerry Dennis, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *kerry.dennis@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Real Estate Transactions.

OMB Number: 1545–0997.

Form Number: 1099–S.

Abstract: Internal Revenue Code section 6045(e) and the regulations there under require persons treated as real estate brokers to submit an information return to the IRS to report the gross proceeds from real estate transactions. Form 1099–S is used for this purpose. The IRS uses the information on the form to verify compliance with the reporting rules regarding real estate transactions.

Current Actions: There are no changes being made to the form at this time. However, changes to the estimated number of filers (3,646,110 to 2,573,400), will result in a burden decrease (510,456 to 360,276).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 2,573,400.

Estimated Time per Response: 8 min.

Estimated Total Annual Burden Hours: 360,276.

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: June 7, 2013.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2013–14585 Filed 6–19–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0782]

Proposed Information Collection (Veterans Benefits Administration (VBA) Voice of the Veteran (VOV) Pilot Surveys) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments information needed to determine beneficiary satisfaction with benefit application and servicing processes for the VBA Compensation Service (CS), Pension Service (P&F), Education (EDU) Service, Loan Guaranty (LGY) Service and Vocational Rehabilitation and Employment (VR&E) Service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0782'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Titles

a. Enrollment Satisfaction, Compensation and Pension
b. Enrollment Satisfaction, Education
c. Servicing Satisfaction, Education
d. Enrollment Satisfaction, Loan Guarantee Service
e. Servicing Satisfaction, Pension
f. Servicing Satisfaction, Specially Adapted Housing
g. Enrollment Satisfaction, Vocational Rehabilitation and Employment
h. Escaped Beneficiary Vocational Rehabilitation and Employment
i. Servicing Satisfaction, Vocational Rehabilitation and Employment
j. Enrollment Satisfaction, Compensation and Pension
k. Servicing Satisfaction, Compensation
l. Enrollment Satisfaction, Education
m. Servicing Satisfaction, Education
n. Enrollment Satisfaction, Loan Guarantee Service
o. Servicing Satisfaction, Pension
p. Servicing Satisfaction, Special Adapted Housing
q. Enrollment Satisfaction, Vocational Rehabilitation and Employment
r. Non-Participant, Vocational Rehabilitation and Employment
s. Servicing Satisfaction, Vocational Rehabilitation and Employment

OMB Control Number: 2900–0782.

Type of Review: Revision of a currently approved collection.

Abstract: In 2008, VBA recognized a need to develop and design an integrated, comprehensive Voice of the Veteran (VOV) measurement program for their lines of business: Compensation Service, Pension Service, Education Service, Loan Guaranty Service and Vocational Rehabilitation and Employment Service. This continuous measurement program will help VBA understand what is important to Veterans relative to VBA services and

will provide VA/VBA leadership with actionable and timely Veteran feedback on how VBA is performing against those metrics. Insights will help identify opportunities for improvement and measure the impact of improvement initiatives. This information collection request is for a tracking study for the VOV program. The results of the tracking study will allow VBA to measure the effectiveness of new initiatives and changes in the processes identified within the VOV Tracking Study. Further, the volumes for each survey-type have been increased in order to provide regional offices with a statistically valid sample size, as approved and reviewed by VBA Leadership and statistician.

Affected Public: Individuals and Households.

Estimated Annual Burden: 32,950 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Total Estimated Number of Respondents: 130,800.

Dated: June 17, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–14688 Filed 6–19–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Thursday,

No. 119 June 20, 2013

Part II

Nuclear Regulatory Commission

10 CFR Part 51, 54

Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications; License Renewal of Nuclear Power Plants; Generic Environmental Impact Statement and Standard Review Plans for Environmental Reviews; Final Rules

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AI42

[NRC–2008–0608]

Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its environmental protection regulations by updating the Commission's 1996 findings on the environmental effect of renewing the operating license of a nuclear power plant. The final rule redefines the number and scope of the environmental impact issues that must be addressed by the NRC during license renewal environmental reviews. This final rule also incorporates lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996.

DATES: This rule is effective on July 22, 2013. However, compliance is not required until June 20, 2014.

ADDRESSES: Please refer to Docket ID NRC–2008–0608 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0608. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.
- *NRC's Agencywide Documents Access and Management System (ADAMS*): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section XII, ''Availability of Documents,'' of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Schneider, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4123; email: *Stewart.Schneider@nrc.gov;* or Mr. Jeffrey Rikhoff, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1090; email: *Jeffrey.Rikhoff@nrc.gov.*

Executive Summary

Purpose of the Regulatory Action

The Atomic Energy Act of 1954 authorizes the NRC to issue commercial nuclear power plant operating licenses for up to 40 years. The NRC's regulations allow for the renewal of these operating licenses for up to an additional 20 years. The license renewal process includes reviewing a license renewal application, conducting the assessment, and then, if all applicable safety standards are met, renewing the license. The NRC's review of a license renewal application proceeds along two independent regulatory tracks: one for safety issues and another for environmental issues. The license renewal process is defined by a clear set of regulations that are designed to ensure safe operation and protection of the environment during the license renewal term. The NRC's regulations for the license renewal safety review are set forth in Part 54 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC's environmental protection regulations are set forth in 10 CFR part 51.

The renewal application is the principal document that an applicant provides to both request and support renewal for a nuclear power reactor's operating license. The license renewal application includes both general and technical information that demonstrates that an applicant is in compliance with the NRC's regulations in 10 CFR part 54. During the renewal process, the license renewal applicant must confirm whether the design assumptions used for the original licensing basis will continue to be valid throughout the period of extended operation and that the aging effects will be adequately managed. The applicant must demonstrate that the effects of aging will be managed in such a way that the intended functions of ''passive'' or ''long-lived'' structures and components (such as the reactor vessel, reactor coolant system, piping, steam generators, pressurizer, pump casings, and valves) will be maintained during the license renewal term (also known as the period of extended operation). For active components, such as motors, diesel generators, cooling fans, batteries, relays, and switches, the Commission's ongoing regulatory oversight programs already ensure that the components continue to perform their intended function during the period of license renewal. This information must be sufficiently detailed in the application to permit the NRC staff to determine if the applicant's management of these issues is adequate to allow operation during the extended period of operation without undue risk to the public and workers' health and safety.

In addition to the safety assessment, the applicant must also prepare an evaluation of the potential impacts to the environment of facility operation for an additional 20 years. Under the NRC's environmental protection regulations in 10 CFR part 51, which implement the National Environmental Policy Act (NEPA), renewal of a nuclear power plant operating license requires the preparation of an environmental impact statement (EIS). To support the preparation of these EISs, the NRC issued a rule in 1996 to define which impacts would essentially be the same at all nuclear power plants (Category 1 issues) and which ones could be different at different plants and would require a plant-specific analysis to determine the impacts (Category 2 issues). For each license renewal application, those impacts that require a plant-specific analysis must be analyzed by the applicant in its environmental report and by the NRC in its associated EIS. The final rule amends those regulations by updating the Commission's 1996 rule. The final rule redefines the number and scope of the environmental impact issues that must be addressed by the NRC and applicants during license renewal environmental reviews. These changes are based primarily on lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996.

The NRC prepared a regulatory analysis to determine the expected quantitative and qualitative costs and benefits of the final rule. The analysis concluded that the final rule will result

in net savings to the industry and the NRC. For more information, please see the regulatory analysis (ADAMS Accession No. ML110760321).

Summary of the Major Rule Changes

In the 1996 rule, there were 92 environmental impact issues, 23 of which required a plant-specific analysis (Category 2 issues) during license renewal environmental reviews. In the final rule, there are 78 environmental impact issues, 17 of which require a plant-specific analysis. The following bullets summarize the major changes to the rule:

- Based on the related nature of the issues, several Category 1 issues were consolidated with other Category 1 issues. This includes some issues that were changed from Category 2 to Category 1 and subsequently combined with other, related Category 1 issues. Similarly, several Category 2 issues were combined with related Category 2 issues.
- New Category 1 issues were added: geology and soils; effects of dredging on surface water quality; groundwater use and quality; exposure of terrestrial organisms to radionuclides; exposure of aquatic organisms to radionuclides; effects of dredging on aquatic organisms; impacts of transmission line right-of-way management on aquatic resources; employment and income; tax revenues; human health impacts from chemicals; and physical occupational hazards.
- Several issues were changed from Category 2 to Category 1: Offsite land use, air quality, public services (several issues), and population and housing.
- New Category 2 issues were added: Radionuclides released to groundwater, water use conflicts with terrestrial resources, water use conflicts with aquatic resources, and cumulative impacts.
- One uncharacterized issue was reclassified as Category 2: Environmental justice/minority and low-income populations.
- One Category 1 issue was revised to narrow the scope of its finding due to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decision in *New York* v. *NRC,* 681 F.3d 471 (D.C. Cir. 2012), which vacated the NRC's 2010 Waste Confidence Decision and Rule (75 FR 81032 and 81037; December 23, 2010): Onsite storage of spent nuclear fuel.
- One Category 1 issue was reclassified as uncategorized due to the *New York* v. *NRC* decision: Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Meetings
III. Discussion
IV. Response to Public Comments
A. Overview
B. Summary of Comments Resulting in Substantive Changes to the Rule
C. Summary of Other Comments
V. Related Issues of Importance
A. Fukushima Events
B. Removal of References to the Waste Confidence Decision and Rule
C. Effective and Compliance Dates for Final Rule
D. Best Management Practices
E. Definition of ''Historic Properties''
VI. Revisions to 10 CFR 51.53
A. Reclassifying Category 2 Issues as Category 1 Issues
B. Adding New Category 2 Issues
VII. Response to Specific Request for Voluntary Information
VIII. Final Actions and Basis for Changes to Table B–1
IX. Section-by-Section Analysis
X. Guidance Documents
XI. Agreement State Compatibility
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XIV. Environmental Impact—Categorical Exclusion
XV. Paperwork Reduction Act Statement
XVI. Plain Writing
XVII. Regulatory Analysis
XVIII. Regulatory Flexibility Act Certification
XIX. Backfitting and Issue Finality
XX. Congressional Review Act

I. Background

Rulemaking History

In 1986, the NRC initiated a program to develop license renewal regulations and associated regulatory guidance in anticipation of receiving applications for the renewal of nuclear power plant operating licenses. In 1996, the NRC published a final rule that amended the environmental protection regulations in 10 CFR part 51 for applicants seeking to renew an operating license for up to an additional 20 years.[1] The 1996 final rule was based upon the analyses and findings of a May 1996 NRC environmental impact statement, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' NUREG–1437 (the ''1996 GEIS'') (Vol. 1, ''Main Report,'' ADAMS Accession No. ML040690705; Vol. 2, ''Appendices,'' ADAMS Accession No. ML040690738).

Based upon the findings of the 1996 GEIS, the 1996 final rule identified those license renewal environmental impact issues for which a generic analysis had been determined to be appropriate and therefore, did not have to be addressed by a license renewal applicant in its plant-specific environmental report or by the NRC in its plant-specific supplemental environmental impact statements (SEISs) to the 1996 GEIS. Similarly, based upon the findings of the 1996 GEIS, the 1996 final rule identified those environmental impacts for which a site- or plant-specific analysis was required, both by the applicant in its environmental report and by the NRC in its SEIS. The 1996 final rule, amongst other amendments to 10 CFR part 51, added Appendix B to Subpart A of 10 CFR part 51, ''Environmental Effect of Renewing the Operating License of a Nuclear Power Plant.'' Appendix B included Table B–1, ''Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants,'' which summarized the findings of the 1996 GEIS.

In preparing the 1996 GEIS, the Commission determined that certain environmental impacts associated with the renewal of a nuclear power plant operating license were the same or similar for all plants and, as such, could be treated on a generic basis. In this way, repetitive reviews of these environmental impacts could be avoided. The Commission based its generic assessment of certain environmental impacts on the following factors:

(1) License renewal will involve nuclear power plants for which the environmental impacts of operation are well understood as a result of lessons learned and knowledge gained from operating experience and completed license renewals.

(2) Activities associated with license renewal are expected to be within this range of operating experience; thus, environmental impacts can be reasonably predicted.

(3) Changes in the environment around nuclear power plants are gradual and predictable.

The 1996 GEIS improved the efficiency of the license renewal process by: (1) Providing an evaluation of the types of environmental impacts that may occur from renewing commercial nuclear power plant operating licenses; (2) identifying and assessing impacts that are expected to be generic (i.e., the same or similar) at all nuclear power plants or plants with specified plant or site characteristics; and (3) defining the number and scope of environmental impacts that need to be addressed in plant-specific SEISs to the 1996 GEIS.

In short, the 1996 final rule identified environmental impact issues (i.e., Category 1 issues)[2] that do not have to

[1] 61 FR 28467 (June 5, 1996).

[2] A Category 1 issue is one that meets the following criteria: (1) The environmental impacts

Continued

be addressed by licensees in environmental reports for nuclear power plant license renewal applications or by the NRC in plant-specific SEISs because these issues have been addressed generically for all nuclear power plants in the 1996 GEIS. Similarly, the 1996 final rule also identified environmental impact issues (i.e., Category 2 issues) [3] that must be addressed in plant-specific reviews by licensees in their environmental reports and by the NRC in the SEISs.

On December 18, 1996 (61 FR 66537), the NRC amended the final rule published in 1996 to incorporate minor clarifying and conforming changes and to add language omitted from Table B–1 in Appendix B to Subpart A of 10 CFR part 51 (hereafter ''Table B–1 in Appendix B to Subpart A of 10 CFR Part 51'' is referred to as ''Table B–1'').

1999 Final Rule

The NRC amended 10 CFR part 51, including Table B–1, on September 3, 1999 (64 FR 48496). This amendment expanded the generic findings pertaining to the environmental impacts resulting from transportation of fuel and waste to and from a single nuclear power plant. This amendment also incorporated rule language consistent with the 1996 GEIS, which addressed local traffic impacts attributable to the continued operations of a nuclear power plant during the license renewal term.

Current Rulemaking

As stated in the 1996 final rule that incorporated the findings of the GEIS in 10 CFR part 51, the NRC recognized that environmental impact issues might change over time and that additional issues may need to be considered. As further stated in the preamble to Table B–1, the NRC indicated that it intended to review the material in Table B–1 on a 10-year basis.

The NRC began this review on June 3, 2003, by publishing a notice of intent to revise the 1996 GEIS (68 FR 33209). As part of this process and pursuant to 10 CFR 51.29, the NRC conducted scoping and held a series of public meetings (*see* 74 FR 38119 for more details). The original public comment period began in June 2003 and closed in September 2003. The project was inactive for the next 2 years due to limited NRC staff resources and competing demands. On October 3, 2005 (70 FR 57628), the NRC reopened the public comment period and extended it until December 30, 2005.

On July 31, 2009 (74 FR 38117), the NRC published the proposed rule, ''Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,'' for public comment in the **Federal Register**. The proposed rule would amend Table B–1 by updating the Commission's 1996 findings on the environmental impacts related to the renewal of nuclear power plant operating licenses and other NRC environmental protection regulations (e.g., 10 CFR 51.53, which sets forth the contents of the applicant's environmental report). Together with the proposed rule, the NRC also published a notice of availability of the draft revised GEIS (ADAMS Accession No. ML090220654); a proposed Revision 1 of Regulatory Guide (RG) 4.2, Supplement 1, ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications'' (ADAMS Accession No. ML091620409); and a proposed Revision 1 to NUREG–1555, Supplement 1, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants'' (ADAMS Accession No. ML090230497), in the **Federal Register** (74 FR 38238). All of the documents requested public comments.

The proposed amendments were based on consideration of (1) Comments received from the public during the public scoping period, (2) a review of comments received on plant-specific SEISs completed since the 1996 GEIS was issued, and (3) lessons learned and knowledge gained from previous and ongoing license renewal environmental reviews. The history of this rulemaking is discussed in more detail in the July 31, 2009 (74 FR 38117), proposed rule. The draft revised GEIS provided the regulatory basis for the July 2009 proposed rule.

The proposed rule provided a 75-day public comment period, which closed on October 14, 2009. The NRC received requests to extend the comment period to provide the public more time to analyze and review the legal, regulatory, and policy issues covered by the proposed rule and supporting documents. On October 7, 2009 (74 FR 51522), the NRC granted the requests, and the public comment period for the proposed rule and the proposed revisions to the GEIS, the regulatory guide, and standard review plan was extended to January 12, 2010.

II. Public Meetings

During the public comment period, the NRC conducted six public meetings to solicit comments on the proposed rule, draft revised GEIS, and related draft guidance documents. The official transcripts, written comments, and meeting summaries for the following public meetings are available electronically for public inspection at the NRC's PDR or online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html:*

(1) September 15, 2009, Atlanta, GA (ADAMS Accession No. ML092810007);

(2) September 17, 2009, Newton, MA (ADAMS Accession No. ML092931681);

(3) September 24, 2009, Oak Brook, IL (ADAMS Accession No. ML092931545);

(4) October 1, 2009, Rockville, MD (ADAMS Accession No. ML092931678);

(5) October 20, 2009, Pismo Beach, CA (ADAMS Accession No. ML093070174); and

(6) October 22, 2009, Dana Point, CA (ADAMS Accession No. ML093100505).

A summary of these meetings is publicly available under ADAMS Accession No. ML093070141.

On June 21, 2011, the NRC conducted another public meeting to discuss final rule implementation in Rockville, MD. No public comments were solicited at this meeting because the public comment period for the proposed rule had closed on January 12, 2010. A summary of this meeting is publicly available in ADAMS under Accession No. ML11182B535.

III. Discussion

1996 GEIS

Under the NRC's environmental protection regulations in 10 CFR part 51, which implements Section 102(2) of NEPA, renewal of a nuclear power plant operating license requires the preparation of an EIS (*see* 10 CFR 51.20(b)(2)). The 1996 GEIS summarized the findings of a systematic inquiry into the environmental impacts of continued operations and refurbishment activities associated with license renewal. Of the 92 environmental issues identified and analyzed by the NRC, 69 issues were determined to be generic (i.e., Category 1); 21 were determined to be plant-specific (i.e., Category 2); and two did not fit into either category (i.e., uncategorized). Category 1 issues concern those potential environmental impacts resulting from license renewal that are common or generic to all

associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic; (2) a single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for collective offsite radiological impacts from the fuel cycle and from high-level waste and spent fuel disposal); and (3) mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation.

[3] A Category 2 issue is one where one or more of the Category 1 criteria cannot be met, and therefore additional plant-specific review is required.

nuclear power plants (or for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic). Category 2 issues concern those potential environmental impacts resulting from license renewal that are not common or generic to all nuclear power plants and, as such, require a plant-specific analysis to determine the level of impact. The two uncategorized issues would be addressed by the NRC in each SEIS. Table B–1 summarizes the findings of the environmental impact analyses conducted for the 1996 GEIS and lists each issue and its category level.

Impact levels (small, moderate, or large) were determined for most NEPA issues (e.g., land use, air, water) evaluated in the 1996 GEIS. A small impact means that the environmental effects are not detectable, or are so minor that they would neither destabilize nor noticeably alter any important attribute of the resource. A moderate impact means that the environmental effects are sufficient to alter noticeably, but not destabilize, important attributes of the resource. A large impact means that the environmental effects would be clearly noticeable and would be sufficient to destabilize important attributes of the resource.

The 1996 GEIS has been effective in focusing the NRC's resources on important license renewal environmental impact issues and has increased the efficiency of the environmental review process. Currently, 73 nuclear units at 43 plant sites have received renewed operating licenses.

Revised GEIS

The revised GEIS (Vol. 1, ''Main Report,'' ADAMS Accession No. ML13106A241; Vol. 2, ''Public Comments,'' ADAMS Accession No. ML13106A242; and Vol. 3, ''Appendices,'' ADAMS Accession No. ML13106A244) is both an update and a re-evaluation of the potential environmental impacts arising from the renewal of an operating license for a nuclear power reactor for an additional 20 years. Lessons learned and knowledge gained during previous license renewal environmental reviews provided a significant source of new information for the revised GEIS. In addition, public comments received during previous license renewal environmental reviews were re-examined to validate existing environmental issues and identify new ones. In preparing the revised GEIS, the NRC considered the need to modify, add to, consolidate, or delete any of the 92 environmental issues evaluated in the 1996 GEIS.

In the proposed rule and draft revised GEIS, the NRC carried forward 78 environmental impact issues for detailed consideration. Fifty-eight of these issues were determined to be Category 1. Of the remaining 20 issues, 19 were determined to be Category 2 and one issue, ''Electromagnetic fields, chronic effects,'' remained uncategorized.[4] These issues were summarized in the July 31, 2009 (74 FR 38117), proposed rule.

Based on public comments received on the proposed rule and draft revised GEIS, a number of the environmental impact issues identified in the proposed rule were re-evaluated for detailed consideration in the final revised GEIS and are reflected in the changes made by the final rule. These changes are discussed in detail in Section VIII, ''Final Actions and Basis for Changes to Table B–1,'' of this document and are briefly summarized as follows:

(1) ''Air quality during refurbishment (nonattainment and maintenance areas)'' issue was changed from a Category 2 to a Category 1 issue and renamed, ''Air quality impacts (all plants).''

(2) ''Groundwater and soil contamination'' issue was changed from a Category 2 to a Category 1 issue and consolidated with the ''Groundwater use and quality'' issue into a single renamed Category 1 issue, ''Groundwater contamination and use (non-cooling system impacts).''

(3) ''Thermal impacts on aquatic organisms'' issue was changed to remove several Category 1 thermal impacts issues (these Category 1 issues were consolidated together with a Category 2 thermal impact issue in the proposed rule) to create a new separate combined Category 1 issue, ''Infrequently reported thermal impacts (all plants),'' which also includes the previously separate ''Stimulation of aquatic nuisance species (e.g., shipworms),'' Category 1 thermal impact issue.

(4) ''Impingement and entrainment of aquatic organisms'' issue was changed to remove a single impingement and entrainment Category 1 issue (consolidated with other impingement and entrainment issues in the proposed rule) to create a new, separate Category 1 issue, ''Entrainment of phytoplankton and zooplankton (all plants).''

In addition to the changes previously discussed, the NRC has made changes to the ''Onsite storage of spent nuclear fuel'' issue and the ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal'' issue as a result of the United States Court of Appeals decision in *New York* v. *NRC,* 681 F.3d 471 (D.C. Cir. 2012), which vacated the NRC's 2010 Waste Confidence Decision and Rule (75 FR 81032 and 81037; December 23, 2010). The Category 1 ''Onsite storage of spent nuclear fuel'' issue was revised to limit the period of time covered by the issue to the license renewal term. Similarly, the NRC revised the Category 1 issue, ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal'' by reclassifying the issue from a Category 1 issue with an impact level of small to an uncategorized issue with an impact level of uncertain. Section V of this document, ''Related Issues of Importance,'' provides further details on the NRC's revisions to these issues in response to the *New York* v. *NRC* decision.

Ultimately, 59 environmental impact issues were determined to be Category 1 and would not require additional plant-specific analysis unless new and significant information is identified during the license renewal environmental review. Of the remaining 19 issues, 17 were determined to be Category 2, one remained uncategorized with respect to determining the impact level (''Chronic effects of electromagnetic fields (EMFs)''), and one was reclassified from Category 1 to uncategorized (''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal''). These 78 issues were evaluated in the revised GEIS and are summarized in the final rule. No environmental issues identified in Table B–1 and evaluated in the 1996 GEIS were eliminated, but certain issues were consolidated or grouped according to similarities.

Environmental issues in the revised GEIS are arranged by resource area. This perspective is a change from the 1996 GEIS in which environmental issues are arranged by power plant systems (e.g., cooling systems, transmission lines) and activities (e.g., refurbishment). The structure of the revised GEIS conforms to the NRC's standard format for EISs found in Appendix A to Subpart A of 10 CFR part 51, ''Format for Presentation of Material in Environmental Impact Statements.'' The environmental impacts of license renewal activities, including plant operations, maintenance, and

[4] ''Electromagnetic fields, chronic effects'' remains an uncategorized issue. Due to the lack of a scientific consensus on the impacts of chronic exposure to electromagnetic fields, the NRC has not categorized this issue and did not perform a plant-specific analysis. Once a scientific consensus is reached, the NRC will categorize the issue for license renewal.

refurbishment activities, along with replacement power alternatives, are addressed in each resource area. The revised GEIS evaluated environmental impact issues under the following resource areas: (1) Land use and visual resources, (2) air quality and noise, (3) geologic environment, (4) water resources (surface water resources and groundwater resources), (5) ecological resources (terrestrial resources, aquatic resources, special status species and habitats), (6) historic and cultural resources, (7) socioeconomics, (8) human health, (9) environmental justice, and (10) waste management and pollution prevention. The final rule revises Table B–1 to follow the organizational format of the revised GEIS.

In the 1996 GEIS, the NRC assumed that licensees would need to conduct major refurbishment activities to ensure the safe and economic operation of nuclear power plants beyond the current license term. Activities included replacement and repair of major components and systems, upgrades, and equipment. Replacement of many systems, structures, and components included steam generators and pressurizers for pressurized water reactors (PWRs) and recirculation piping systems for boiling water reactors (BWRs). It was assumed that many nuclear power plants would also undertake construction projects to replace or improve infrastructure. Such projects could include construction of new parking lots, roads, storage buildings, structures, and other facilities.

Licensee practice since publication of the 1996 GEIS has shown that many refurbishment activities have already taken place (e.g., steam generator and vessel head replacement). Most license renewal applicants have not identified any refurbishment activities associated with license renewal. Therefore, the revised GEIS assumes that impacts from refurbishment activities outside of license renewal have been accounted for in annual site evaluation reports, environmental operating reports, and radiological environmental monitoring program reports. Detailed analyses have not been performed for refurbishment actions in the revised GEIS. Instead, the impacts of typical activities during the license renewal term, including any refurbishment activities, are addressed for each resource area.

Environmental impacts of license renewal and the resources that could be affected are identified in the revised GEIS. The general analytical approach for identifying environmental impacts was to: (1) Describe the nuclear power plant activity that could result in an environmental impact, (2) identify the resource that may be affected, (3) evaluate past license renewal reviews and other available information, (4) assess the nature and magnitude of the environmental impact on the affected resource, (5) characterize the significance of the effects, and (6) determine whether the results of the analysis apply to all nuclear power plants (i.e., whether the impact issue is Category 1 or Category 2).

The revised GEIS, and therefore the final rule, retains the 1996 GEIS definitions of a Category 1 and Category 2 issue. While some Category 2 issues have been changed to Category 1, no Category 1 issue has been changed to Category 2. The final rule makes four major types of changes:

(1) *New Category 1 Issues:* New Category 1 issues are either new Category 1 issues (i.e., not previously evaluated in the 1996 GEIS and listed in Table B–1) or multiple Category 1 issues from the 1996 GEIS (and listed as multiple Category 1 issues in Table B–1 of the current rule) that have been consolidated into a single Category 1 issue in the revised GEIS and in Table B–1. An applicant for license renewal does not need to assess the potential environmental impacts from these issues in its environmental report. However, under 10 CFR 51.53(c)(3)(iv), the applicant is still responsible for reporting in the environmental report any ''new and significant information'' of which the applicant is aware. If the applicant is not aware of any new and significant information that changes the conclusion in the revised GEIS, the applicant must state this determination in the environmental report. The NRC has addressed the environmental impacts of these Category 1 issues generically for all plants in the revised GEIS.

(2) *New Category 2 Issues:* New Category 2 issues are either new Category 2 issues (i.e., not previously evaluated in the 1996 GEIS and listed in Table B–1) or multiple Category 2 issues from the 1996 GEIS (and listed as multiple Category 2 issues in Table B–1 of the current rule) that have been consolidated into a single Category 2 issue in the revised GEIS and in Table B–1. For each new Category 2 issue, an applicant must conduct a plant-specific assessment of the potential environmental impacts related to that issue and include it in its environmental report. The NRC will then analyze the potential environmental impacts related to that issue in the SEIS.

(3) *Existing Issue Category Changes from Category 2 to Category 1:* These are issues that were determined to be Category 2 in the 1996 GEIS and have been re-evaluated and determined to be Category 1 in the revised GEIS. Table B–1 has been amended by the final rule. An applicant is no longer required to conduct a plant-specific assessment of the environmental impacts associated with these issues in its environmental report. Similarly, the NRC is no longer required to analyze the potential environmental impacts related to that issue in the SEIS. However, consistent with the requirements of 10 CFR 51.53(c)(3)(iv), an applicant is still required to describe in its environmental report any ''new and significant information'' of which it is aware.

(4) Existing Issue Changes from Category 1 to Uncategorized: The ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal'' issue [5] was determined to be a Category 1 issue in the 1996 GEIS, but given the DC Circuit decision in *New York* v. *NRC,* the NRC reclassified the issue to uncategorized in the revised GEIS. Table B–1 has been amended by the final rule. Because the issue is uncategorized in this final rule, pending further action by the Commission, an applicant is not required to conduct a plant-specific assessment of the environmental impacts associated with this issue in its environmental report.

IV. Response to Public Comments

A. Overview

The public comment period for the proposed rule, draft revised GEIS, and draft guidance documents associated with this rulemaking, ended on January 12, 2010. The NRC received 32 document submissions containing comments from industry stakeholders, representatives of Federal and State agencies, and other interested parties. The NRC also received verbal comments at the six public meetings held during the public comment period. A detailed description of all public comments submitted on the proposed rule, draft revised GEIS, and draft guidance documents, and the NRC's responses to those comments, are contained in separate documents (*see* Section XII, ''Availability of Documents,'' of this document). The following section summarizes the major issues raised during the public comment period resulting in substantive changes to the rule and other issues raised for which no changes were made to the rule.

[5] The issue was named ''Offsite radiological impacts (spent fuel and high waste disposal)'' in the 1996 rule and GEIS.

B. Summary of Comments Resulting in Substantive Changes to the Rule

Several issues were raised during the public comment period that resulted in substantive changes to the proposed rule, which are briefly discussed in the following paragraphs.

Seismic issues. Many commenters wanted seismic issues to be included in the rule and pointed out the importance of reassessing seismic conditions in determining the safety of operating nuclear power plants. Industry commenters disagreed and argued that seismology should not be considered as part of the issue of ''Impacts of nuclear plants on geology and soils'' in the proposed rule because it is an ongoing safety issue that is being addressed at all plants.

NRC Response. The NRC agrees with the industry commenters that consideration of seismic conditions is an ongoing safety issue. Although seismic conditions at nuclear power plants were generically discussed in the revised GEIS as part of the geologic environment, seismology was not identified as a separate issue in the revised GEIS because the NRC considered historical earthquake data for each nuclear power plant when that plant was first licensed. The NRC requires all licensees to take seismic hazards into account in order to maintain safe operating conditions at all nuclear power plants. When new seismic hazard information becomes available, the NRC evaluates the new data and models to determine if any changes are needed at existing plants. This continuous oversight process, which includes seismic safety, remains separate from license renewal and takes place on an ongoing basis at all licensed nuclear facilities.

Sections 3.4 and 4.4.1 of the revised GEIS explain that geologic and seismic conditions were considered in the original design of nuclear power plants and are part of the license bases for operating plants. Seismic conditions are attributes of the geologic environment that are not affected by continued plant operations and refurbishment and are not expected to change appreciably during the license renewal term for all nuclear power plants. The findings relative to geologic and soil conditions were re-evaluated in the revised GEIS and as such, the issue has been renamed, ''Geology and soils,'' in Table B–1, and the findings have been revised for clarity.

Air quality impacts. Several commenters objected to the issue, ''Air quality (nonattainment and maintenance areas),'' being listed as a Category 2 issue in the proposed rule. These commenters argued that air quality impacts would be small even in worst-case situations, because licensees are required to operate within State air permit requirements.

NRC Response. The NRC agrees with the commenters. The final rule revises Table B–1 by reclassifying the issue as a Category 1 issue. Operating experience has shown that the potential impact from emergency generators and boilers on air quality would be small for all plants and, given the infrequency and short duration of maintenance testing, would not be an air quality concern even at plants located in or adjacent to nonattainment areas.

In addition, the analysis presented in the revised GEIS has shown that the worst-case emissions from cooling tower drift and particulate emissions at operating plants were also small. Air quality impacts from vehicle, equipment, and fugitive dust emissions associated with refurbishment would also be small for most plants but could be a cause for concern for plants located in or near air quality nonattainment or maintenance areas. However, the impacts are expected to be temporary and would cease once projects were completed. In addition, operating experience has shown that refurbishment activities have not required the large numbers of workers and extended durations conservatively predicted and analyzed in the 1996 GEIS, nor have such activities resulted in exceedances in the *de minimis* thresholds for criteria pollutants in nonattainment and maintenance areas. Consequently, the NRC agrees with these commenters' arguments that air quality impacts would be small for all plants and, therefore, a Category 1 issue.

Groundwater and soil contamination. Several commenters objected to the new Category 2 issue, ''Groundwater and soil contamination,'' in the proposed rule and asserted that contamination from industrial practices is addressed by the U.S. Environmental Protection Agency (EPA) and State regulations that monitor and address these impacts. Specifically, the use, storage, disposal, release, and/or cleanup of spilled or leaked solvents, hydrocarbons, and other potentially hazardous materials are governed by the Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act; Toxic Substances Control Act; Federal Insecticide, Fungicide, and Rodenticide Act; and the Federal Water Pollution Control Act (also known as the Clean Water Act (CWA)).

NRC Response. While classified as a Category 2 issue in the proposed rule, further consideration of the ''Groundwater and soil contamination'' issue and public comments revealed that the potential impacts on groundwater and soil quality from common industrial practices (e.g., the use, handling, storage, and disposal of chemicals, petroleum products, waste, and hazardous material) can be addressed generically because industrial practices employed by nuclear power plants are not unique, but common to all industrial facilities. The NRC concludes that the overall impact of industrial practices on groundwater use and quality from past and current operations is small for all nuclear power plants and not expected to change appreciably during the license renewal term. The NRC agrees with the commenters to the extent that clarification was needed and that common industrial practices that can cause groundwater or soil contamination can be addressed generically as a Category 1 issue.

Further, the final rule combines the reclassified ''Groundwater and soil contamination'' issue with the Category 1 proposed rule issue, ''Groundwater use and quality,'' and renames the consolidated Category 1 issue as ''Groundwater contamination and use (non-cooling system impacts).'' These issues were consolidated because they both consider the impact of industrial activities associated with the continued operations of a nuclear power plant (not directly related to cooling system effects) on groundwater use and quality. Consolidating these issues also conforms to the resource-based approach used in the revised GEIS and serves to facilitate the license renewal environmental review process.

The finding column of Table B–1 for ''Impacts of refurbishment on groundwater use and quality'' prior to the final rule, as analyzed in the 1996 GEIS, indicated that impacts of continued operations and refurbishment on groundwater use and quality would be small, as extensive dewatering is not anticipated, and the application of best management practices for handling any materials produced or used during activities would reduce impacts. These findings were re-evaluated in the revised GEIS and are retained in the finding column of Table B–1 for the consolidated issue.

This new consolidated issue also considers the impacts on groundwater, soil, and subsoil from the industrial use of solvents, hydrocarbons, heavy metals, or other chemicals at nuclear power plant sites during the license renewal

term, including the impacts resulting from the use of wastewater disposal ponds or lagoons (both lined or unlined). Industrial practices at all nuclear power plants have the potential to contaminate groundwater and soil, especially on sites with unlined wastewater and storm water lagoons. Contaminants have been found in groundwater and soil samples at some nuclear power plants during previous license renewal environmental reviews.

Any groundwater and soil contamination at operating nuclear power plants is subject to characterization and clean-up under EPA- and State-regulated remediation and monitoring programs. In addition, wastewater disposal ponds and lagoons are subject to discharge authorizations under the National Pollutant Discharge Elimination System (NPDES) and related State wastewater discharge permit programs. Each operating nuclear power plant must comply with these EPA and State regulatory requirements. As such, each site has an established program for handling chemicals, waste, and other hazardous materials. Moreover, nuclear power plant licensees are expected to employ best management practices, both in minimizing effluents and in remediation. Thus, this new consolidated issue, as set forth in the final revised GEIS and the final rule, is listed as a Category 1 issue.

C. Summary of Other Comments

Radionuclides in groundwater. Several commenters expressed opposition to the inclusion of a new Category 2 issue, ''Radionuclides released to groundwater,'' with an impact estimate of small to moderate in the proposed rule. Some commenters indicated that the issue category should be changed to Category 1; others suggested that the levels of significance should range to large. The argument for changing the issue to Category 1 was based on the voluntary industry-wide initiative, Nuclear Energy Institute (NEI) 07–07, ''Industry Ground Water Protection Initiative—Final Guidance Document'' (ADAMS Accession No. ML072610036), designed to protect groundwater.

NRC Response. This new, Category 2 issue evaluates the potential contamination and degradation of groundwater resources resulting from inadvertent discharges of radionuclides into groundwater from nuclear power plants. Within the past several years, there have been numerous events at power reactor sites that involved unknown, uncontrolled, and unmonitored releases of radionuclides into the groundwater. The number of these events and the high level of public controversy have made this an issue that the NRC believes needs a ''hard look,'' as required by NEPA.

As a voluntary action, NEI 07–07 cannot be enforced by the NRC. As such, no violations can be issued against a licensee who fails to comply with the guidance in NEI 07–07. Furthermore, the NRC cannot rely on a voluntary initiative as a basis to ensure that the nuclear power industry will monitor and have adequate information available for the NRC to determine whether the issue does or does not have an adverse impact on groundwater resources.

Regarding the magnitude of impact, the NRC bases its determination of small to moderate impact on a review of existing plants that have had inadvertent releases of radioactive liquids. Even though the NRC expects impacts for all plants to be within this range, a conclusion of large impact would not be precluded for a future license renewal review based on new and significant information, if the data supports such a conclusion. As reflected in the revised final GEIS and the final rule, ''Radionuclides released to groundwater,'' remains a Category 2 issue.

Radiation exposures to the public. Several commenters identified recent studies that claim an association between cancer risk and proximity to nuclear power facilities.

NRC Response. The NRC's regulatory limits for radiological protection are set to protect workers and the public from the harmful health effects (i.e., cancer and other biological impacts) of radiation to humans. The limits are based on the recommendations of scientific standards-setting organizations. These radiation standards reflect extensive scientific study by national and international organizations. The NRC actively participates in and monitors the work of these organizations to remain current on the latest trends in radiation protection. If the NRC determines that there is a need to revise its radiation protection regulations, it will initiate a separate rulemaking. The models recognized by the NRC for use by licensees to calculate dose incorporate conservative assumptions to ensure that workers and members of the public are adequately protected from radiation.

On April 7, 2010, the NRC announced that it asked the National Academy of Sciences (NAS) to perform a state-of-the-art study on cancer risk for populations surrounding nuclear power facilities (ADAMS Accession No. ML100970142). The NAS has a broad range of medical and scientific experts who can provide the best available analysis of the complex issues involved in discussing cancer risk and commercial nuclear power plants. The NAS is a nongovernmental organization chartered by the U.S. Congress to advise the nation on issues of science, technology, and medicine. Through the National Research Council and Institute of Medicine, it carries out studies independently of the Government, using processes designed to promote transparency, objectivity, and technical rigor. More information on its methods for performing studies is available at *http://www.nationalacademies.org/studycommitteprocess.pdf.*

The NAS study will update the 1990 U.S. National Institutes of Health National Cancer Institute (NCI) report, ''Cancer in Populations Living Near Nuclear Facilities'' (NCI 1990), which concluded there was no evidence that nuclear facilities may be linked causally with excess death from leukemia or from other cancers in populations living nearby.[6] The study's objectives are to: (1) Evaluate whether cancer risk is different for populations living near nuclear power facilities, (2) include cancer occurrence, (3) develop an approach to assess cancer risk in geographic areas that are smaller than the county level, and (4) evaluate the study results in the context of offsite doses from normal reactor operations. The study began in the summer of 2010 and is expected to be completed within 4 years. The final revised GEIS has added a discussion on the NRC's sponsorship of this follow-up to the 1990 NCI study.

Onsite storage of spent nuclear fuel, waste disposal, and Yucca Mountain. Several commenters expressed concern about the increasing volume of spent nuclear fuel at existing power plant sites and the availability of a geological repository at Yucca Mountain for future waste disposal.

NRC Response. The Commission is aware that geologic disposal, at Yucca Mountain or elsewhere, may not be available in the timeframe that was originally envisioned. As an alternative, the Commission has considered the storage of spent nuclear fuel on reactor sites where it is generated. The impacts associated with onsite storage of spent nuclear fuel at nuclear power plant sites during the license renewal term are discussed in Section 4.11.1.2 of the revised GEIS. The impacts associated with offsite radiological impacts from

[6] More information on this report is available at *http://www.cancer.gov/cancertopics/factsheet/Risk/nuclear-facilities.*

spent nuclear fuel and high-level waste disposal are discussed in Section 4.11.1.3 of the revised GEIS. In light of the DC Circuit's decision in *New York* v. *NRC,* 681 F.3d 471, the NRC has revised two Table B–1 issues, ''Onsite storage of spent nuclear fuel'' and ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.'' Section V of this document, ''Related Issues of Importance,'' provides a discussion of the NRC's revisions to these two issues, as well as the actions the NRC has taken or will take in response to the *New York* v. *NRC* decision.

Postulated accidents. Numerous comments were received on the NRC's evaluation and classification of postulated accidents in the draft revised GEIS. One commenter disagreed with the GEIS' conclusion that environmental impact from design basis accidents (DBAs) is small. Also, several commenters disagreed with the GEIS conclusion that the environmental impact from severe accidents is small and further, that the evaluation is not adequate because of its use of probability-weighted risk assessments. Their position is that for severe accidents, the revised GEIS should also evaluate the consequences of reactor accidents and expand the evaluation to include spent fuel pool accidents and accidents due to age-related plant component degradation. In addition, some of the commenters stated that the NRC has gained enough information from the many plant licenses it has renewed to make a determination, on a generic basis, that the ''severe accidents'' issue should be reclassified as Category 1.

NRC Response.

Design Basis Accidents. The NRC does not agree that the GEIS' evaluation of DBAs is incorrect. The NRC evaluates and presents the potential consequences of DBAs in nuclear power plant licensing documents and considers them in the GEIS for license renewal.

In order to receive NRC approval for an initial operating license, an applicant must submit a final safety analysis report (FSAR) as part of its application. The FSAR presents the applicable design criteria and design information for the proposed reactor, as well as comprehensive data on the proposed site. The FSAR also discusses hypothetical reactor accident situations and addresses the safety features that prevent and mitigate those accidents. During the initial licensing process for a power reactor, the NRC reviews the FSAR to determine whether or not the plant design meets the NRC's regulations.

At initial licensing, the NRC also considered the environmental impact of DBAs at each operating nuclear power plant. The DBAs are those events that both the applicant and the NRC evaluate to ensure that the plant can withstand normal and abnormal transients (e.g., rapid changes in reactor power) without undue risk to the health and safety of the public. Although the NRC does not expect that all of these postulated events will occur during the life of the plant, the NRC evaluates them to establish the basis for the preventive and mitigative safety systems of the facility. The acceptance criteria for DBAs are described in 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR part 100, ''Reactor Site Criteria.'' Compliance with these regulations provides reasonable assurance of adequate protection of public health and safety.

During operations, the NRC requires each power plant licensee to maintain acceptable design and performance criteria in accordance with the NRC's regulations, including during any license renewal period. Therefore, the calculated releases from DBAs will remain within the NRC's regulatory limits.

The 1996 GEIS, in Section 5.2, discusses the impacts of potential accidents. It contains a discussion of plant accidents and consequences. This discussion addresses general characteristics of design basis (and severe) accidents, characteristics of fission products, meteorological considerations, possible exposure pathways, potential adverse health effects, avoiding adverse health effects, accident experience and observed impacts, and emergency preparedness. The revised GEIS reexamined the information from the 1996 GEIS and concluded that it is still valid. Because the information on DBAs is valid and has not changed, the revised GEIS does not repeat the information from the 1996 GEIS.

Severe Accidents. The NRC does not agree with the comments that the revised GEIS evaluation is inadequate regarding the impacts from severe accidents because it uses probability-weighted risk assessments. Severe accidents (i.e., beyond design basis accidents) are those that could result in substantial damage to the reactor core, whether or not there are serious off-site consequences. The 1996 GEIS estimated and considered the potential impacts on human health and economic factors from full-power severe reactor accidents initiated by internal events at different types of nuclear facilities located in different types of settings. That evaluation included modeling the release of radioactive materials into the environment and modeling the pathways (i.e., exposure to the radioactive plume, inhalation of radioactivity, consumption of contaminated food) through which members of the public could potentially be exposed to doses of radiation. Based on the calculated doses, the GEIS reported the consequences (i.e., potential early and latent fatalities) from such accidents. In developing a potential impact level, however, the NRC took into account the very low probability of such events, as well as their potential consequences, and concluded that the likely impact from individual nuclear power plants is small.

In the revised GEIS, the NRC expanded the scope of the severe accident evaluations and used more recent technical information that included both internal and external event core-damage frequency, as well as improved severe accident source terms, spent fuel pool accidents, low power and reactor shutdown events, new radiation risk-coefficients from the National Academy of Sciences, ''Health Risks from Exposure to Low Levels of Ionizing Radiation: Biological Effects of Ionizing Radiation (BEIR) VII'' report,[7] and risk impacts of reactor power uprates and higher fuel burn-up levels. As a result, the revised GEIS considers updated information in determining the potential consequences of a reactor accident. Considering this updated information and that severe reactor accidents remain unlikely, the revised GEIS concludes that the environmental impacts of a severe accident remain small.

The NRC notes, however, that the GEIS is not the primary vehicle the NRC uses to address and regulate risks from severe accidents. The NRC's regulations and regulatory practices employ safety standards in the design, construction, and operation of nuclear power plants as well as risk models to ensure the public is adequately protected on an on-going basis. The NRC's ongoing oversight addresses the public's risk from nuclear power plant accidents, accounts for the effects of proposed changes that may be made as part of power plant operations, and considers new information about the facility or its environment when necessary.

[7] The BEIR VII report can be accessed at *http://search.nap.edu/napsearch.php?term=beir+vii.* The NRC staff reviewed this report in SECY–05–0202, ''Staff Review of the National Academies Study of the Health Risks from Exposure to Low Levels of Ionizing Radiation (BEIR VII),'' dated October 29, 2005 (ADAMS Accession No. ML052640532).

Although the NRC has determined that impacts from severe accidents are small for all facilities, the NRC continues to maintain that severe accidents cannot be a Category 1 issue because plant-specific mitigation measures vary greatly based on plant designs, safety systems, fuel type, operating procedures, local environment, population, and siting characteristics. Thus, severe accidents remain a Category 2 issue. Accordingly, the NRC has not changed the requirements in 10 CFR 51.53(c)(3)(ii)(L) that an applicant's environmental report must contain a discussion that considers alternatives to mitigate severe accidents if the NRC has not previously considered this issue in an environmental impact statement or environmental assessment for the facility.

Spent Fuel Pool Accidents. The 1996 GEIS included a quantitative analysis of a severe accident involving a reactor operating at full power. A qualitative evaluation of SFP accidents is presented in Appendix E of the revised GEIS. Based on this evaluation, the revised GEIS concludes that the environmental impacts from accidents involving SFPs are comparable to those from the reactor accidents at full power that were evaluated in the 1996 GEIS and as such, SFP accidents do not warrant separate evaluation. Based on the continued validity of conclusions from the 1996 GEIS, as affirmed by the Commission (*see* following paragraph), the revised GEIS does not contain a quantitative evaluation of SFP accidents.

The issue of an accident involving the spent fuel pool was specifically addressed by the NRC in its denial of two petitions for rulemaking (PRM): PRM–51–10 and PRM–51–12, submitted by the Attorney General of the Commonwealth of Massachusetts in 2006 and the Attorney General of California in 2007, respectively.[8] The petitioners requested that the NRC initiate a rulemaking concerning the environmental impacts of the high density storage of spent nuclear fuel in SFPs. The petitioners asserted that ''new and significant information'' shows that the NRC incorrectly characterized the environmental impacts of high-density spent fuel storage as ''insignificant'' in the 1996 GEIS for the renewal of nuclear power plant licenses. Specifically, the petitioners asserted that spent fuel stored in high-density SFPs is more vulnerable to a zirconium fire than the NRC concluded in its NEPA analysis. The NRC denied the two petitions, and the NRC denial was upheld by the United States Court of Appeals.

Aging-related Degradation. Issues related to age-related plant component degradation are addressed in the NRC's safety evaluation of the plant's license renewal application. The regulations covering the safety review for license renewal are in 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

The 1996 GEIS discusses the potential effects of age on the physical plant and notes that such deterioration could result in an increased likelihood of component or structure failure that could increase the rate of plant accidents. The GEIS notes that the NRC requires an applicant for license renewal to address the issue of age-related degradation by identifying, in an integrated plant assessment process, those passive, long-lived structures and components that are susceptible to age-related degradation and whose functions are necessary to ensure that the facility's current licensing basis is maintained. The GEIS found that the safety evaluation performed by the NRC as part of the license renewal process provides reasonable assurance that age-related degradation is managed and adequate protection of the health and safety of the public is maintained during the license renewal period. Therefore, the 1996 GEIS concluded, ''. . . the probability of any radioactive releases from accidents will not increase over the license renewal period.'' Based on nuclear power plants' continued compliance with 10 CFR part 54 to manage age-related degradation, the revised GEIS did not alter or revise this conclusion from the 1996 GEIS.

Greenhouse gas emissions and climate change. Several commenters discussed the need to include a discussion of the effects of climate change on plant operations and the effect of continued operations during the license renewal period on environmental resources affected by climate change.

NRC Response. The NRC acknowledges these concerns. The NRC has begun to evaluate the effects of greenhouse gas (GHG) emissions and its implications for global climate change in its environmental reviews for both new reactor and license renewal applications. Changes in climate have the potential to affect air and water resources, ecological resources, and human health, and should be taken into account when evaluating cumulative impacts over the license renewal term.

Subsequent to the publication of the proposed rule and during the public comment period, the Commission issued a memorandum and order concerning two combined operating license applications for new reactor units at the Tennessee Valley Authority Bellefonte site in Alabama and the Duke Energy Carolinas Lee site in South Carolina (CLI–09–21). The memorandum and order stated:

> because the Staff is currently addressing the emerging issues surrounding greenhouse gas emissions in environmental reviews required for the licensing of nuclear facilities, we believe it is prudent to provide the following guidance to the Staff. We expect the Staff to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under the National Environmental Policy Act. The Staff's analysis for reactor applications should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed. The Staff should ensure that these issues are addressed consistently in agency NEPA evaluations and, as appropriate, update Staff guidance documents to address greenhouse gas emissions.[9]

Presently, insufficient data exists to support an impact level on a generic basis. The NRC only has direct emission data for a handful of facilities. Although some states have varying reporting requirements, GHG emissions reporting nationwide is in its infancy. The EPA promulgated its GHG emissions reporting rule on October 30, 2009 (74 FR 56260). In accordance with this rule, the first industry reporting date was March 31, 2011.[10] Moreover, the 25,000 annual metric ton reporting threshold EPA established in the final rule of October 30, 2009, is not an indication of what EPA considers to be a significant (or insignificant) level of GHG emissions on a scientific basis, but a threshold chosen by EPA for policy evaluation purposes.[11]

In order to comply with the Commission's direction in CLI–09–21 and in response to the comments received, a new section, ''Greenhouse Gas Emissions and Climate Change'' (Chapter 4, Section 4.12.3), summarizing the potential cumulative

[8] These PRMs were denied in the same **Federal Register** notice (73 FR 46204; August 8, 2008).

[9] In the matter of Duke Energy Carolinas, LLC (Combined License Application for William States Lee III Nuclear Station, Units 1 and 2); In the matter of Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI–09–21 (NRC November 3, 2009).

[10] 74 FR at 56267: October 30, 2009, codified at 40 CFR 98.3(b) (''The annual GHG report must be submitted no later than March 31 of each calendar year for GHG emissions in the previous calendar year'').

[11] The EPA concluded for policy evaluation purposes, that the 25,000 metric ton threshold more effectively targets large industrial emitters and suppliers, covers approximately 85 percent of the U.S. emissions, and minimizes the burden on smaller facilities (74 FR 56264; October 30, 2009).

impacts of GHG emissions and global climate change, has been added to the final revised GEIS. The NRC will also include within each SEIS a plant-specific analysis of any impacts caused by GHG emissions over the course of the license renewal term as well as any impacts caused by potential climate change upon the affected resources during the license renewal term. The final rule was not revised to include any reference to GHG emissions or climate change.

Recent advances in alternative energy technologies. Several commenters asserted that much of the information describing alternative energy technologies did not reflect the state-of-the-science. In some cases, commenters noted facts and events that occurred after the publication date of the draft revised GEIS.

NRC Response. The NRC has updated the final revised GEIS to incorporate the latest information on replacement power alternatives, but it is inevitable that rapidly evolving technologies will outpace the information presented in the final revised GEIS. Incorporation of this information is more appropriately made in the context of plant-specific license renewal reviews, rather than in the evaluations contained in the revised GEIS. As with renewable energy technologies, energy policies are evolving rapidly. While the NRC acknowledges that legislation, technological advancements, and public policy can underlie a fundamental paradigm shift in energy portfolios, the NRC cannot make decisions based on anticipated or speculative changes. Instead, the NRC considers the status of replacement power alternatives and energy policies when conducting plant-specific reviews. The final revised GEIS has been updated to clarify the NRC's approach to conducting replacement power alternative evaluations.

Emergency preparedness and security. Several commenters expressed concern with emergency preparedness, evacuation, and safety and security at nuclear power plants. Commenters stated that these topics were not addressed in the proposed rule and not adequately covered in the revised GEIS and should be included in the scope of the plant-specific SEISs.

NRC Response. Emergency preparedness and planning are part of the current licensing basis for each holder of a 10 CFR part 50 operating license and are outside the regulatory scope of license renewal. Before a plant is licensed to operate, the NRC must have ''reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency'' (10 CFR 50.47). The Commission's regulatory scheme provides continuing assurance that emergency planning for every operating nuclear power plant is adequate. The Commission has determined that there is no need for a special review of emergency planning issues in the context of an environmental review for license renewal because the ongoing decisions and findings concerning emergency preparedness at nuclear power plants address concerns as they arise.

The Commission considered the need for a review of emergency planning issues in the context of license renewal during its rulemaking proceedings on 10 CFR part 54, which included public notice and comment. As discussed in the Statement of Considerations for the 10 CFR part 54 rulemaking (56 FR 64966; December 13, 1991), the programs for emergency preparedness at nuclear power facilities apply to all nuclear power facility licensees and require the specified levels of protection from each licensee regardless of plant design, construction, or license date. The NRC requirements related to emergency planning are in the regulations at 10 CFR 50.47 and Appendix E to 10 CFR part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities.'' These requirements apply to all holders of operating licenses and will continue to apply to facilities with renewed licenses. Through its standards and required exercises, the Commission reviews existing emergency preparedness plans throughout the life of any facility, keeping up with changing demographics and other site-related factors.

Further, the NRC actively reviews its regulatory framework to ensure that the regulations are current and effective. The agency began a major review of its emergency preparedness framework in 2005, including a comprehensive review of the emergency preparedness regulations and guidance, the issuance of generic communications regarding the integration of emergency preparedness and security, and outreach efforts to interested persons to discuss emergency preparedness issues. These activities informed a rulemaking effort to enhance the NRC's emergency preparedness regulations and guidance. This effort culminated in a final rule, which was published in the **Federal Register** on November 23, 2011 (76 FR 72560).

Security issues are not tied to a license renewal action but are treated on an ongoing basis as a part of the current (and renewed) operating license. If issues related to security are discovered at a nuclear power plant, they are addressed immediately, and any necessary changes are reviewed and incorporated under the current operating license. For example, after the terrorist attacks of September 11, 2001, the NRC issued security-related orders and guidance to nuclear power plant licensees. These orders and guidance included interim measures for emergency planning. Nuclear industry groups and Federal, State, and local government agencies assisted in the prompt implementation of these measures and participated in drills and exercises to test these new planning elements. The NRC reviewed licensees' commitments to address these requirements and verified their implementation through inspections to ensure public health and safety.

In summary, the issue of security is not unique to nuclear power plants requesting license renewal. The NRC routinely assesses threats and other information provided by other Federal agencies and sources. The NRC also ensures that licensees meet their security requirements through its ongoing regulatory process (routine inspections) as a current and generic regulatory issue that affects all nuclear power plants. Therefore, as discussed in the Statement of Considerations for the 10 CFR part 54 rulemaking (56 FR 64966), the Commission determined that there is no need for an evaluation of security issues in the context of a license renewal review.

V. Related Issues of Importance

This section addresses five issues of related importance to the final rule: (1) Consideration of the recent events at the Fukushima Dai-ichi Nuclear Power Plant, (2) removal of those parts of the final rule that refer to and rely upon the NRC's Waste Confidence Decision and Rule, (3) a description of the final rule's effective and compliance dates, (4) clarification of the term ''best management practices,'' and (5) deletion of the proposed definition of the term ''historic properties.''

A. Fukushima Events

On March 11, 2011, a massive earthquake off the east coast of Honshu, Japan produced a devastating tsunami that struck the coastal town of Fukushima. The six-unit Fukushima Dai-ichi Nuclear Power Plant was directly impacted by these events. The resulting damage caused the failure of several of the units' safety systems needed to maintain cooling water flow to the reactors. As a result of the loss of cooling, the fuel overheated, and there

was a partial meltdown of the fuel contained in several of the reactors. Damage to the systems and structures containing reactor fuel resulted in the release of radioactive material to the surrounding environment.

In response to the earthquake, tsunami, and resulting reactor accidents at the Fukushima Dai-ichi Nuclear Power Plant (hereafter referred to as the ''Fukushima events''), the Commission directed the NRC staff to convene an agency task force of senior leaders and experts to conduct a methodical and systematic review of the relevant NRC regulatory requirements, programs, and processes, including their implementation, and to recommend whether the agency should make near-term improvements to its regulatory system. As part of the short-term review, the task force concluded that, while improvements are expected to be made as a result of the lessons learned from the Fukushima events, the continued operation of nuclear power plants and licensing activities for new plants do not pose an imminent risk to public health and safety.[12]

During the time that the task force was conducting its review, groups of individuals and non-governmental organizations petitioned the Commission to suspend all licensing decisions in order to conduct a separate, generic NEPA analysis to determine whether the Fukushima events constituted ''new and significant information'' under NEPA that must be analyzed as part of environmental reviews. The Commission found the request premature and noted, ''[i]n short, we do not know today the full implications of the [Fukushima] events for U.S. facilities.'' [13] However, the Commission found that if ''new and significant information comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, the agency will assess the significance of that information, as appropriate.'' [14] The Federal courts of appeal and the Commission have interpreted NEPA such that an EIS must be updated to include new information only when that new information provides ''a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.'' [15]

In the context of the revised GEIS and this rulemaking, the Fukushima events are considered a severe accident (i.e., a type of accident that may challenge a plant's safety systems at a level much higher than expected) and more specifically, a severe accident initiated by an event external to the plant. The 1996 GEIS concluded that risks from severe accidents initiated by external events (such as an earthquake) could have potentially high consequences but found that external events are adequately addressed through a consideration of a severe accident initiated by an internal event (such as a loss of cooling water). Therefore, an applicant for license renewal need only analyze the environmental impacts from an internal event in order to adequately characterize the environmental impacts from either type of event. The revised GEIS examined more recent and up-to-date information regarding external events and concluded that the analysis in the 1996 GEIS remains valid. The Fukushima events are not considered in the revised GEIS because the analysis in the revised GEIS was completed prior to the Fukushima events.

The NRC's evaluation of the consequences of the Fukushima events is ongoing. As such, the NRC will continue to evaluate the need to make improvements to existing regulatory requirements based on the task force report and additional studies and analyses of the Fukushima events as more information is learned. To the extent that any revisions are made to the NRC's regulatory requirements, they would be made applicable to nuclear power reactors regardless of whether or not they have a renewed license. Therefore, no additional analyses have been performed in the revised GEIS as a result of the Fukushima events. In the event that the NRC identifies information from the Fukushima events that constitutes new and significant information with respect to the environmental impacts of license renewal, the NRC will discuss that information in its site-specific SEISs to the GEIS, as it does with all such new and significant information.

B. Removal of References to the Waste Confidence Decision and Rule

The Waste Confidence Decision and Rule represented the Commission's generic determination that spent nuclear fuel can continue to be stored safely and without significant environmental impacts for a period of time after the end of the licensed life for operation of a nuclear power plant.[16] This generic determination meant that the NRC did not need to consider the storage of spent nuclear fuel after the end of a reactor's licensed life for operation in the NEPA documents that support its reactor and spent-fuel storage license application reviews.

On December 23, 2010, the Commission published a revision of the Waste Confidence Decision and Rule to reflect information gained from experience in the storage of spent nuclear fuel and the increased uncertainty in the siting and construction of a permanent geologic repository for the disposal of spent nuclear fuel and high-level waste.[17] In response to the 2010 Waste Confidence Decision and Rule, the states of New York, New Jersey, Connecticut, and Vermont, along with several other parties, challenged the Commission's NEPA analysis in the decision, which provided the regulatory basis for the rule. On June 8, 2012, the United States Court of Appeals, District of Columbia Circuit, in *New York* v. *NRC,* 681 F.3d 471 (D.C. Cir. 2012), vacated the NRC's Waste Confidence Decision and Rule, after finding that it did not comply with NEPA.

The court concluded that the Waste Confidence Decision and Rule is a major federal action necessitating either an EIS or an environmental assessment that results in a ''finding of no significant impact.'' In vacating the 2010 decision and rule, the court identified three specific deficiencies in the analysis:

1. As to the Commission's conclusion that permanent disposal will be available ''when necessary,'' the court held that the Commission did not evaluate the environmental effects of failing to secure permanent disposal;

2. As to the storage of spent fuel on-site at nuclear plants after the expiration

[12] Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (July 12, 2011) (ADAMS Accession No. ML111861807).

[13] *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI–11–05, _ NRC _, _ (slip op. at 30) (Sept. 9, 2011).

[14] *Id.* at 30–31.

[15] *Id.* at 31 (quoting *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI–99–22, 50 NRC 3, 14 (1999) (citing *Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360, 373 (1989))). The Commission also noted that it can modify a facility's operating license outside of a renewal proceeding and made clear that ''it will use the information from these activities to impose any requirement it deems necessary, irrespective of whether a plant is applying for or has been granted a renewed operating license.'' *Id.* at 26–27.

[16] The NRC first adopted the Waste Confidence Decision and Rule in 1984. The NRC amended the decision and rule in 1990, reviewed them in 1999, and amended them again in 2010. 49 FR 34694 (August 31, 1984); 55 FR 38474 (September 18, 1990); 64 FR 68005 (December 6, 1999); and 75 FR 81032 and 81037 (December 23, 2010). The NRC made a minor amendment to the rule in 2007 to clarify that it applies to combined licenses. 72 FR 49509 (August 28, 2007). The Waste Confidence Decision and Rule are codified in the NRC regulation 10 CFR 51.23.

[17] 75 FR 81032 and 81037.

of a plant's operating license, the court concluded that the Commission failed to properly examine the risk of spent fuel pool leaks in a forward-looking fashion; and

3. Also related to the post-license storage of spent fuel, the court concluded that the Commission failed to properly examine the consequences of spent fuel pool fires.

In response to the court's ruling, the Commission issued CLI–12–16 on August 7, 2012 (ADAMS Accession No. ML12220A212), in which the Commission determined that it would not issue licenses that rely upon the Waste Confidence Decision and Rule until the issues identified in the court's decision are appropriately addressed by the Commission. CLI–12–16 provided, however, that the decision not to issue licenses only applied to final license issuance; all licensing reviews and proceedings should continue to move forward. In SRM–COMSECY–12–0016, ''Approach for Addressing Policy Issues Resulting from Court Decision to Vacate Waste Confidence Decision and Rule,'' dated September 6, 2012 (ADAMS Accession No. 12250A032), the Commission directed the NRC staff to proceed with a rulemaking that includes the development of a generic EIS to support a revised Waste Confidence Decision and Rule and to publish both the EIS and the revised decision and rule in the **Federal Register** within 24 months. The Commission indicated that both the EIS and the revised Waste Confidence Decision and Rule should build on the information already documented in various NRC studies and reports, including the existing environmental assessment that the NRC developed as part of the 2010 Waste Confidence Decision and Rule. The Commission directed that any additional analyses should focus on the three deficiencies identified in the court's decision. The Commission also directed that the NRC staff provide ample opportunity for public comment on both the draft EIS and the proposed Waste Confidence Decision and Rule.

In accordance with CLI–12–16, the NRC will not approve any site-specific license renewal applications until the deficiencies identified in the court's decision have been resolved. Two Table B–1 license renewal issues that rely, wholly or in part, upon the Waste Confidence Decision and Rule are the ''Onsite storage of spent nuclear fuel'' and ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.'' Both of these issues were classified as Category 1 in the 10 CFR part 51 rule that was promulgated in 1996; the 2009 proposed rule continued the Category 1 classification for both of these issues. As part of the NRC's response to the *New York* v. *NRC* decision, this final rule revises these two issues accordingly. Specifically, this final rule revises the Category 1 ''Onsite storage of spent nuclear fuel'' issue to narrow the period of onsite storage to the license renewal term. In both the 1996 rule [18] and the 2009 proposed rule, the NRC relied upon the Waste Confidence Decision and Rule to make a generic finding that spent nuclear fuel could be stored safely onsite with no more than a small environmental impact for the term of the extended license (from approval of the license renewal application to the expiration of the operating license) plus a 30-year period following the permanent shutdown of the power reactor and expiration of the operating license.[19]

The Waste Confidence Decision and Rule provided the basis for the 30-year period following the permanent shutdown of the reactor and expiration of the operating license. The 2010 Waste Confidence Decision and Rule extended this post-reactor shutdown onsite storage period from 30 years to 60 years. Given the *New York* v. *NRC* decision, and pending the issuance of a generic EIS and revised Waste Confidence Decision and Rule (as directed by SRM–COMSECY–12–0016), the final rule excludes from this issue the period of onsite storage of spent nuclear fuel following the permanent shutdown of the power reactor and expiration of the operating license. As revised by this final rule, this issue now covers the onsite storage of spent fuel for the term of the extended license only.

Similarly, this final rule revises the Category 1 issue ''Offsite radiological impacts of spent nuclear fuel and high level waste disposal.'' [20] In both the 1996 rule and the 2009 proposed rule, this issue pertained to the long-term disposal of spent nuclear fuel and high-level waste, including possible disposal in a deep geologic repository. Although the Waste Confidence Decision and Rule did not assess the impacts associated with disposal of spent nuclear fuel and high-level waste in a repository, it did reflect the Commission's confidence, at the time, in the technical feasibility of a repository and when that repository could have been expected to become available. Without the analysis in the Waste Confidence Decision, the NRC cannot assess how long the spent fuel will need to be stored onsite. Therefore, the final rule reclassifies this issue from a Category 1 issue with no assigned impact level to an uncategorized issue with an impact level of uncertain.

Upon issuance of the generic EIS and revised Waste Confidence Rule, the NRC will make any necessary conforming amendments to this rule. As referenced previously, the Commission will not approve any license renewal application for an operating nuclear power plant until the issues identified in the court's decision are appropriately addressed by the Commission.

C. Effective and Compliance Dates for Final Rule

The amendments made by the final rule shall be effective 30 days after the final rule's publication in the **Federal Register**. License renewal applicants are not required to comply with the amended rule until 1 year after the final rule's publication in the **Federal Register**. The Commission has decided on a 1-year compliance date given the long lead time required for preparation of license renewal applicant environmental reports.

D. Best Management Practices

''Best management practices'' is a term used to describe a type, method, or treatment technique for preventing pollution or reducing the quantities of pollutants released to the environment. The term, as used herein, includes the physical components used to control or minimize pollution (e.g., filters, barriers, mechanical devices, and retention ponds), as well as operational or procedural practices (e.g., minimizing use of a pollutant, spill control, and operator training). Best management practices are used in a variety of industrial sectors. In the nuclear power reactor sector, as in other industrial sectors, best management practices offer flexibility to achieve a balance between protecting the environment and the efficiency and economic limitations associated with the operations of a given plant. Both in the 1996 GEIS and in the revised GEIS, several issues have been determined to be a Category 1 issue with an impact level of small based upon the assumption that the license renewal applicant employs and will continue to employ best management practices

[18] The issue was named ''On-site spent fuel'' in the 1996 rule.

[19] Prior to the December 23, 2010, final rule, 10 CFR 51.23(a) read: ''The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations.''

[20] The issue was named ''Offsite radiological impacts (spent fuel and high level waste disposal)'' in the 1996 rule.

during the license renewal term. The NRC's regulatory experience has shown that licensees employ such best management practices.

The NRC's jurisdiction is limited to radiological health and safety and common defense and security. Therefore, the NRC does not generally impose a requirement that its licensees adopt those best management practices that concern non-radiological pollutants. The NRC nuclear power plant licensees, however, are subject to a host of regulatory requirements that are monitored and enforced by other Federal agencies (e.g., the EPA) or State or local regulatory agencies. The NRC-licensed nuclear power plants must obtain a variety of permits from these other agencies before they can operate (e.g., under the CWA, a licensee must obtain a NPDES permit from the EPA or, if the EPA has delegated its CWA authority to a particular State, from the appropriate agency of that State). These permits typically require that the licensee adopt and adhere to best management practices.

Therefore, an assumption underlying the revised GEIS is that NRC licensees will use best management practices to comply with other Federal, State, and local government requirements to prevent or reduce the quantities of non-radiological pollutants released to the environment. This description of best management practices is not a regulatory or policy change by the NRC because the use of best management practices by nuclear power plant licensees was also an underlying assumption of the 1996 GEIS. Rather, the NRC seeks to make transparent its basis for determining that certain issues are Category 1 issues with a small level of impact.

E. Definition of ''Historic Properties''

The proposed rule would have amended 10 CFR part 51 by adding a definition of the term ''historic properties'' to 10 CFR 51.14(a). Upon further consideration, the NRC determined that adding the definition was unnecessary. The NRC's license renewal determination to renew or not renew a nuclear power plant operating license is considered an undertaking as defined by Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations in 36 CFR part 800. The regulations define the term ''historic property'' in 36 CFR 800.16(l)(1). The NRC uses the term ''historic property'' or ''historic properties'' in the same context as set forth in 36 CFR 800.16(l)(1).

VI. Revisions to 10 CFR 51.53

The final rule revises 10 CFR 51.53 to conform to those changes made by the final rule to Table B–1. Because some Category 2 issues have been reclassified as Category 1 issues, license renewal applicants no longer need to assess these issues and, therefore, the final rule removes the requirements for applicants to provide information on these issues in their environmental reports. The final rule also adds new requirements to 10 CFR 51.53 for the new Category 2 issues for which applicants are now required to provide information in their environmental reports. The following describes each revision.

A. Reclassifying Category 2 Issues as Category 1 Issues

Section 51.53(c)(3)(ii)(F). The final rule removes and reserves 10 CFR 51.53(c)(3)(ii)(F) because the final rule reclassifies the Category 2 issue, ''Air quality during refurbishment (nonattainment and maintenance areas),'' to Category 1 and renames the issue, ''Air quality impacts (all plants).'' The removed regulatory language required the applicant to assess anticipated vehicle exhaust emissions at the time of refurbishment for plants located in or near a nonattainment or maintenance area, as those terms are defined under the Clean Air Act.

The final rule reclassifies this issue as Category 1 based upon public comments received on the proposed rule [21] and a subsequent re-evaluation of the data in the draft revised GEIS, which showed that air quality impacts from refurbishment have not resulted in exceedances in the *de minimis* thresholds for criteria pollutants in nonattainment and maintenance areas due to construction vehicle, equipment, and fugitive dust emissions. Significant air quality impacts are no longer anticipated from future license renewals. Therefore, applicants no longer need to assess the impacts on air quality of continued operations and refurbishment associated with license renewal in their environmental reports.

Section IV, ''Response to Public Comments,'' of this document provides a summary of the comments received on this issue, and Section VIII, ''Final Actions and Basis for Changes to Table B–1,'' of this document discusses this issue in more detail under Issue 5, ''Air quality impacts (all plants).''

Section 51.53(c)(3)(ii)(I). The final rule removes and reserves 10 CFR 51.53(c)(3)(ii)(I) because several Category 2 socioeconomic issues are reclassified as Category 1. The removed regulatory language required the applicant to assess the impacts of the proposed license renewal on housing availability, land use, and public schools (impacts from refurbishment activities only) within the vicinity of the plant. Additionally, the removed regulatory language required the applicant to assess the impact of population increases attributable to the proposed project on the public water supply. Specifically, the final rule reclassifies the following 1996 GEIS Category 2 socioeconomic issues: Housing impacts; [22] Public services: public utilities; [23] Public services, education (refurbishment); [24] Offsite land use (refurbishment); and Offsite land use (license renewal term).[25]

The final rule reclassifies these issues as Category 1 because significant changes in housing availability, land use, and increased population demand attributable to the proposed refurbishment project on the public water supply have not occurred at relicensed nuclear power plants. Therefore, impacts to these resources are no longer anticipated for future license renewals. In addition, refurbishment activities (such as steam generator and vessel head replacement) have not required the large numbers of workers and the months of time that were conservatively analyzed in the 1996 GEIS. As such, significant impacts on housing availability, land use, public schools, and the public water supply are no longer anticipated from continued operations during the license renewal term and refurbishment associated with license renewal.

Section 51.53(c)(3)(ii)(J). The final rule removes and reserves 10 CFR 51.53(c)(3)(ii)(J) because the Category 2 issue, ''Public services, transportation,'' is reclassified as Category 1 (the final rule also renames the issue, ''Transportation''). The removed

[21] The proposed rule renamed the ''Air quality during refurbishment (nonattainment and maintenance areas)'' issue as ''Air quality (nonattainment and maintenance areas)'' and retained the Category 2 classification.

[22] The final rule renames this issue as ''Population and housing'' (*see* Issue (55) under Section VIII, ''Final Actions and Basis for Changes to Table B–1,'' of this document).

[23] The final rule merges this issue into the consolidated issue, ''Community services and education'' (*see* Issue (54) under Section VIII of this document).

[24] The final rule merges this issue into the consolidated issue, ''Community services and education'' (*see* Issue (54) under Section VIII of this document).

[25] The final rule merges ''Offsite land use (refurbishment)'' and ''Offsite land use (license renewal term) into the consolidated issue, ''Offsite land use'' (*see* Issue (2) under Section VIII of this document).

regulatory language required the applicant to assess the impact of highway traffic generated by the proposed project on the level of service of local highways during periods of license renewal refurbishment activities and during the term of the renewed license. Therefore, applicants no longer need to assess the impacts on local traffic volumes of continued operations and refurbishment associated with license renewal in their environmental reports.

The issue was reclassified to Category 1 because refurbishment activities (such as steam generator and vessel head replacement) have not required the large numbers of workers and the months of time that was conservatively analyzed in the 1996 GEIS. As such, significant transportation impacts are not anticipated from future refurbishment activities. Section VIII, ''Final Actions and Basis for Changes to Table B–1,'' of this document discusses this issue in more detail under Issue 56, ''Transportation.''

Section 51.53(c)(3)(ii)(O). The proposed rule added a new paragraph 10 CFR 51.53(c)(3)(ii)(O) to address ''Groundwater and soil contamination'' as a Category 2 issue. However, based upon public comments received on the proposed rule [26] and further evaluation by the NRC, it was determined that this issue is properly classified as Category 1. Therefore, the proposed paragraph was not adopted by the final rule.[27]

B. Adding New Category 2 Issues

Section 51.53(c)(3)(ii)(N). The final rule adds a new paragraph 10 CFR 51.53(c)(3)(ii)(N) [28] to address ''Minority and low-income populations'' as a Category 2 issue. This new Category 2 issue is listed under the resource area ''Environmental Justice'' in the revised Table B–1. It addresses the effects of nuclear power plant operations and refurbishment associated with license renewal on minority populations and low-income populations living in the vicinity of the plant. This issue was listed in the original Table B–1 but was not evaluated in the 1996 GEIS. The finding in the original Table B–1 stated that ''[t]he need for and the content of an analysis of environmental justice will be addressed in plant specific reviews.'' This issue was not classified as either a Category 1 or 2 issue in the 1996 GEIS because guidance for implementing Executive Order (E.O.) 12898, dated February 16, 1994 (59 FR 7629), which initiated the Federal government's environmental justice program, was not available before the completion of the 1996 GEIS.

In August 2004, the Commission issued a policy statement on implementation of E.O. 12898: ''NRC's Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions'' (69 FR 52040). As stated therein, ''the NRC is committed to the general goals of E.O. 12898, [and] it will strive to meet those goals through its normal and traditional NEPA review process.'' By making this a Category 2 issue, the final rule requires license renewal applicants to identify, in their environmental reports, minority and low-income populations and communities residing in the vicinity of the nuclear power plant. The NRC will then assess the information provided by the applicant in the NRC's plant-specific environmental review.

Section 51.53(c)(3)(ii)(O). The final rule adds a new paragraph 10 CFR 51.53(c)(3)(ii)(O) [29] to address ''Cumulative impacts'' as a Category 2 issue. This new Category 2 issue was added to Table B–1 to evaluate the potential cumulative impacts of continued operations during the license renewal term and refurbishment associated with license renewal at nuclear power plants. The NRC did not address cumulative impacts in the 1996 GEIS but has been evaluating these impacts in plant-specific supplements to the GEIS. The Council on Environmental Quality (CEQ) in 40 CFR 1508.7 defines cumulative impacts as ''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.'' [30] The NRC considers potential cumulative impacts on the environment resulting from the incremental impact of license renewal when added to other past, present, and reasonably foreseeable future actions.

The final rule change requires license renewal applicants to provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear power plant that may result in a cumulative impact. An example of the type of information to be provided includes data on the construction and operation of other power plants and other industrial commercial facilities in the vicinity of the nuclear power plant. Section VIII, ''Final Actions and Basis for Changes to Table B–1,'' of this document discusses this issue in more detail under Issue 73, ''Cumulative impacts.''

Section 51.53(c)(3)(ii)(P). The final rule adds a new paragraph 10 CFR 51.53(c)(3)(ii)(P) [31] to address ''Radionuclides released to groundwater'' as a Category 2 issue. This new Category 2 issue has been added to Table B–1 to evaluate the potential combined impact of inadvertent discharges of radioactive liquids from all plant systems into groundwater. The issue is relevant to license renewal because all commercial nuclear power plants have spent fuel pools, liquid storage tanks, and piping that contain and transport radioactive liquids. Over time, these systems and piping have a potential to degrade and release radioactive liquids that could migrate into the groundwater. The NRC has investigated several cases where radioactive liquids have been inadvertently released into the groundwater in an uncontrolled manner. In accordance with NRC requirements, residual activity from these inadvertent releases is subject to characterization and evaluation of the potential hazard. For this new Category 2 issue, the license renewal applicant is required to provide information on radioactive liquids released to groundwater.

In the final rule, the NRC modified the language of the proposed rule to specify that only ''documented'' releases need to be included in the applicant's environmental report. The NRC provides specific guidance on what constitutes a documented release in Regulatory Guide 4.2, Supplement 1, Revision 1, ''Preparation of Environmental Reports for Nuclear

[26] Section IV, ''Response to Public Comments,'' of this document provides a summary of the comments received on this issue.

[27] The final rule merges this issue into the consolidated issue, ''Groundwater contamination and use (non-cooling system impacts)'' (*see* Issue (20) under Section VIII of this document).

[28] The final rule adopts the proposed rule language.

[29] The proposed rule added this paragraph as 10 CFR 51.53(c)(3)(ii)(P). The final rule redesignates it as 10 CFR 51.53(c)(3)(ii)(O) because paragraph 10 CFR 51.53(c)(3)(ii)(O) of the proposed rule, which concerned ''Groundwater and soil contamination'' (*see* discussion in Section VI, ''A. Reclassifying Category 2 Issues as Category 1 Issues,'' of this document) was not adopted by the final rule.

[30] The NRC's regulations in 10 CFR part 51 incorporate the CEQ definition of cumulative impacts (10 CFR 51.14(b)).

[31] The proposed rule added this paragraph as 10 CFR 51.53(c)(3)(ii)(Q). The final rule redesignates it as paragraph 10 CFR 51.53(c)(3)(ii)(P) because the paragraph added as 10 CFR 51.53(c)(3)(ii)(O) by the proposed rule, which concerned groundwater and soil contamination caused by non-radionuclide, industrial contaminants, was not adopted by the final rule (*see* discussion in Section VI, ''A. Reclassifying Category 2 Issues as Category 1 Issues,'' of this document).

Power Plant License Renewal Applications.''

Section IV, ''Response to Public Comments,'' of this document provides a summary of the comments received on this issue, and Section VIII, ''Final Actions and Basis for Changes to Table B–1,'' of this document discusses this issue in more detail under Issue 27, ''Radionuclides released to groundwater.''

VII. Response to Specific Request for Voluntary Information

In Section VII of the Statement of Considerations for the July 31, 2009 (74 FR 38129–38130), proposed rule, the NRC requested voluntary information from industry about refurbishment activities and employment trends at nuclear power plants. Information on refurbishment would have been used to evaluate the significance of impacts from this type of activity. Information on employment trends would have been used to assess the significance of socioeconomic effects of ongoing plant operations on local economies.

The NRC received no response to these requests. The NRC interprets this lack of response on these issues to mean that information on major refurbishment and replacement activities and employment trends is either unavailable or insufficient to assist the NRC in re-evaluating the significance of refurbishment-related environmental impacts and socioeconomic effects of ongoing plant operations on local economies. Although no information was received regarding refurbishment activities and employment trends at nuclear power plants, the NRC believes that it has sufficient information based on lessons learned and knowledge gained from completed license renewal environmental reviews to substantiate the conclusions made in the final rule and GEIS.

VIII. Final Actions and Basis for Changes to Table B–1

The final rule revises Table B–1 to reflect the changes made in the revised GEIS. The revised GEIS is being made available with the final rule and provides a summary change table (in Appendix B) comparing the 92 environmental issues in the 1996 GEIS with the 78 environmental issues in the revised GEIS.

Land Use

(1) Onsite Land Use: ''Onsite land use'' remains a Category 1 issue. The final rule amends Table B–1 by making minor clarifying changes to the finding column entry for this issue. Specifically, the final rule replaces the sentence ''Projected onsite land use changes required during refurbishment and the renewal period would be a small fraction of any nuclear power plant site and would involve land that is controlled by the applicant,'' with ''Changes in onsite land use from continued operations and refurbishment associated with license renewal would be a small fraction of the nuclear power plant site and would involve only land that is controlled by the licensee.''

(2) Offsite Land Use: The final rule amends Table B–1 by consolidating two Category 2 issues, ''Offsite land use (refurbishment),'' with an impact level range small to moderate, and ''Offsite land use (license renewal term),'' with an impact level range small to large, and reclassifying the consolidated issue as a Category 1 issue, with an impact level of small, and naming the consolidated issue, ''Offsite land use.'' The final rule also creates a new Category 1 issue, ''Tax revenues'' (Issue 53), which concerns the impact of license renewal on state and local tax revenues, thereby removing tax revenues from the 1996 GEIS ''Offsite land use (license renewal term)'' issue. The final rule amends Table B–1 by removing the entries for ''Offsite land use (refurbishment)'' and ''Offsite land use (license renewal term),'' and by adding an entry for ''Offsite land use.'' The finding column entry of ''Offsite land use'' states ''[o]ffsite land use would not be affected by continued operations and refurbishment associated with license renewal.''

The Table B–1 finding column entry for the ''Offsite land use (refurbishment)'' issue indicated that impacts may be of moderate significance at plants in low population areas. Similarly, the finding column entry for the ''Offsite land use (license renewal term)'' issue indicates that significant changes (moderate to large) in land use may be associated with population and tax revenue changes resulting from license renewal. As described in the 1996 GEIS, environmental impacts are considered to be small if refurbishment activities were to occur at plants located in high population areas and if population and tax revenues would not change.

As reflected in the revised GEIS, significant impacts on offsite land use are not anticipated. Previous plant-specific license renewal reviews conducted by the NRC have shown no substantial increases in the number of workers during the license renewal term and that refurbishment activities (such as steam generator and vessel head replacement) have not required the large numbers of workers and the months of time that was conservatively estimated in the 1996 GEIS. These reviews support a finding that offsite land use impacts during the license renewal term would be small for all nuclear power plants.

(3) Offsite Land Use in Transmission Line Right-of-Ways (ROWs): The final rule amends Table B–1 by renaming the ''Power line right of way'' issue as ''Offsite land use in transmission line right-of-ways (ROWs).'' It remains a Category 1 issue with an impact level of small. The final rule amends the Table B–1 finding column entry for this issue by replacing the statement,

> Ongoing use of power line right of ways would continue with no change in restrictions. The effects of these restrictions are of small significance.

with the following:

> Use of transmission line ROWs from continued operations and refurbishment associated with license renewal would continue with no change in land use restrictions.

The final rule further amends Table B–1 by appending a footnote to the issue column entry for ''Offsite land use in transmission line right-of-ways (ROWs),'' concerning the extent to which transmission lines and their associated ROWs have been analyzed in the revised GEIS. The footnote states,

> This issue applies only to the in-scope portion of electric power transmission lines which are defined as transmission lines that connect the nuclear power plant to the substation where electricity is fed into the regional power distribution system and transmission lines that supply power to the nuclear plant from the grid.

As stated in the revised GEIS, the final environmental statements (essentially, the equivalent of environmental impact statements) prepared for the original construction of the various nuclear power plants (the construction permits) and for the initial operating licenses evaluated the impacts of those transmission lines built to connect the nuclear power plant to the regional electrical grid. Since the original construction of those lines, regional expansion of the electrical distribution grid has resulted in incorporation of those lines originating at the power plant substations. In most cases, the transmission lines originating at the power plant substations are no longer owned or managed by the nuclear power plant licensees. These lines would remain in place and be energized regardless of whether the subject nuclear power plant license was renewed or not. For this reason, those transmission lines that would not be impacted by a license renewal decision (i.e., those lines that would not be

dismantled or otherwise decommissioned as a result of a plant terminating operations because its operating license had not been renewed) are considered beyond the scope of, and as such are not analyzed in, the revised GEIS.

Visual Resources

(4) Aesthetic Impacts: The final rule amends Table B–1 by consolidating three Category 1 issues, ''Aesthetic impacts (refurbishment),'' ''Aesthetic impacts (license renewal term),'' and ''Aesthetic impacts of transmission lines (license renewal term),'' each with an impact level of small, into one new Category 1 issue, ''Aesthetic impacts.'' The new consolidated issue also has an impact level of small. The 1996 GEIS concluded that renewal of operating licenses and the refurbishment activities would have no significant aesthetic impact during the license renewal term. Impacts are considered to be small if the visual appearance of plant and transmission line structures would not change. Previous license renewal reviews conducted by the NRC show that the appearance of nuclear power plants and transmission line structures do not change significantly over time or because of refurbishment activities. Therefore, because aesthetic impacts are not anticipated and the three issues are similar, they have been consolidated to facilitate the environmental review process. The final rule amends Table B–1 by removing the entries for ''Aesthetic impacts (refurbishment),'' ''Aesthetic impacts (license renewal term),'' and ''Aesthetic impacts of transmission lines (license renewal term),'' and adding an entry for ''Aesthetic impacts.'' The finding column entry for the new combined entry states ''[n]o important changes to the visual appearance of plant structures or transmission lines are expected from continued operations and refurbishment associated with license renewal.''

Air Quality

(5) Air Quality Impacts (All Plants): The final rule amends Table B–1 by renaming the ''Air quality during refurbishment (nonattainment and maintenance areas)'' issue as ''Air quality impacts (all plants).'' The final rule reflects the revised GEIS's expansion of the issue to include air emission impacts from emergency diesel generators, boilers, and particulate emissions from cooling towers. Based on public comments received on the proposed rule and the re-evaluation of information as described in the revised GEIS, the final rule further amends Table B–1 by revising this Category 2 issue, with an impact level range small to large, to a Category 1 issue with an impact level of small.[32] The final rule further amends Table B–1 by revising the finding column entry for this issue to state,

> Air quality impacts from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Emissions resulting from refurbishment activities at locations in or near air quality nonattainment or maintenance areas would be short-lived and would cease after these refurbishment activities are completed. Operating experience has shown that the scale of refurbishment activities has not resulted in exceedance of the *de minimis* thresholds for criteria pollutants, and best management practices including fugitive dust controls and the imposition of permit conditions in State and local air emissions permits would ensure conformance with applicable State or Tribal Implementation Plans.
>
> Emissions from emergency diesel generators and fire pumps and routine operations of boilers used for space heating would not be a concern, even for plants located in or adjacent to nonattainment areas. Impacts from cooling tower particulate emissions even under the worst-case situations have been small.

Operating experience has shown that air quality impacts from these emission sources (including particulate emissions from cooling towers at operating plants) have been small at all nuclear power plants, including those plants located in or adjacent to nonattainment areas.

In addition, air quality impacts during refurbishment have also been small. These types of emissions could be a cause for concern if they occur at plants located in or near air quality nonattainment or maintenance areas. However, these impacts have been temporary and would cease once these activities were completed. Operating experience has also shown that refurbishment activities have not required the large numbers of workers and the months of time that was conservatively predicted and analyzed in the 1996 GEIS, nor have such activities resulted in exceedances in the *de minimis* thresholds for criteria pollutants in nonattainment and maintenance areas.

Implementation of best management practices, including fugitive dust controls as required by the imposition of conditions in State and local air emissions permits, would ensure conformance with applicable State or Tribal Implementation Plans, in accordance with EPA's revised General Conformity Regulations (75 FR 17254; April 5, 2010). On the basis of these considerations, the NRC has concluded that the air quality impact of continued nuclear power plant operations and refurbishment associated with license renewal would be small for all plants.

(6) Air Quality Effects of Transmission Lines: The final rule amends Table B–1 by appending a footnote to the issue column entry for ''Air quality effects of transmission lines,'' concerning the extent to which transmission lines and their associated right of ways have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment.

Noise

(7) Noise Impacts: The final rule amends Table B–1 by renaming the issue ''Noise'' as ''Noise impacts.'' The issue remains a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by making minor clarifying changes to the finding column entry for this issue. Specifically, the final rule replaces the sentence ''Noise has not been found to be a problem at operating plants and is not expected to be a problem at any plant during the license renewal term,'' with ''Noise levels would remain below regulatory guidelines for offsite receptors during continued operations and refurbishment associated with license renewal.''

Geologic Environment

(8) Geology and Soils: The final rule amends Table B–1 by adding a new Category 1 issue, ''Geology and soils.'' This issue has an impact level of small. The finding column entry for this issue states,

> The effect of geologic and soil conditions on plant operations and the impact of continued operations and refurbishment activities on geology and soils would be small for all nuclear power plants and would not change appreciably during the license renewal term.

This issue was not evaluated in the 1996 GEIS, as described in the proposed rule.[33] This new Category 1 issue considers geology and soils from the perspective of those resource conditions or attributes that can be affected by

[32] Under the proposed rule, the issue had been proposed to be renamed ''Air quality (nonattainment and maintenance areas);'' it would have remained a Category 2 issue with an impact level range of small to large (74 FR 38121, 38134; July 31, 2009).

[33] The proposed rule named the issue ''Impacts of nuclear plants on geology and soils.'' Under the proposed rule, the issue was also a Category 1 issue, with an impact level of small (74 FR 38121, 38134; July 31, 2009).

continued operations during the renewal term. The final rule does not require the license renewal applicant to assess this issue in its environmental report unless the applicant is aware of new and significant information about geologic and soil conditions and associated impacts at or near the nuclear power plant site that could change the conclusion in the GEIS.

An understanding of geologic and soil conditions has been well established at all nuclear power plants and associated transmission lines during the current licensing term, and these conditions are expected to remain unchanged during the 20-year license renewal term for each plant. The impact of these conditions on plant operations and the impact of continued power plant operations and refurbishment activities on geology and soils are small for all nuclear power plants and not expected to change appreciably during the license renewal term. Operating experience shows that any impacts to geologic and soil strata would be limited to soil disturbance from construction activities associated with routine infrastructure renovation and maintenance projects during continued plant operations. Implementing best management practices would reduce soil erosion and subsequent impacts on surface water quality. Information in plant-specific SEISs prepared to date and reference documents have not identified these impacts as being significant.

Surface Water Resources

(9) Surface Water Use and Quality (Non-Cooling System Impacts): The final rule amends Table B–1 by consolidating two Category 1 issues, ''Impacts of refurbishment on surface water quality'' and ''Impacts of refurbishment on surface water use,'' both with an impact level of small, and names the consolidated issue, ''Surface water use and quality (non-cooling system impacts).'' These two issues were consolidated because the impacts of refurbishment on both surface water use and quality are negligible and the effects are closely related. The consolidated issue has also been expanded to include the impacts of continued operations. The consolidated issue is a Category 1 issue with an impact level of small.

The final rule amends Table B–1 by removing the entries for ''Impacts of refurbishment on surface water quality'' and ''Impacts of refurbishment on surface water use'' and adding an entry for ''Surface water use and quality (non-cooling system impacts).'' The finding column entry for the new consolidated issue states,

Impacts are expected to be small if best management practices are employed to control soil erosion and spills. Surface water use associated with continued operations and refurbishment associated with license renewal would not increase significantly or would be reduced if refurbishment occurs during a plant outage.

The NRC expects licensees to use best management practices during the license renewal term for both continuing operations and refurbishment activities. Use of best management practices will minimize soil erosion. In addition, implementation of spill prevention and control plans will reduce the likelihood of any liquid chemical spills. If refurbishment activities take place during a plant outage, with the reactor shutdown, the overall water use by the facility will be reduced. Based on this conclusion, the impact on surface water use and quality during the license renewal term will continue to be small for all plants.

(10) Altered Current Patterns at Intake and Discharge Structures, (11) Altered Salinity Gradients, (12) Altered Thermal Stratification of Lakes, and (13) Scouring Caused by Discharged Cooling Water: These four issues remain Category 1 issues, each with an impact level of small. The final rule amends Table B–1 by making minor clarifying changes to the finding column entries for each of these issues.

The final rule amends the ''Altered current patterns at intake and discharge structures'' finding column entry by replacing the statement,

Altered current patterns have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.

with the following:

Altered current patterns would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.

The final rule amends the ''Altered salinity gradients'' finding column entry by replacing the statement,

Salinity gradients have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.

with the following:

Effects on salinity gradients would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.

The final rule amends the ''Altered thermal stratification of lakes'' finding column entry by replacing the statement,

Generally, lake stratification has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.

with the following:

Effects on thermal stratification would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.

The final rule amends the ''Scouring caused by discharged cooling water'' finding column entry by replacing the statement,

Scouring has not been found to be a problem at most operating nuclear power plants and has caused only localized effects at a few plants. It is not expected to be a problem during the license renewal term.

with the following:

Scouring effects would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.

These changes reflect the findings of environmental reviews conducted since the publication of the 1996 GEIS, which show that the effects of these four issues are localized in the vicinity of the plant's intake and discharge structures.

(14) Discharge of Metals in Cooling System Effluent: The final rule amends Table B–1 by renaming ''Discharge of other metals in waste water'' as ''Discharge of metals in cooling system effluent.'' It remains a Category 1 issue with an impact level of small. The final rule also makes minor clarifying changes to the finding column entry for this issue. Specifically, the final rule amends the finding column entry by replacing the statement,

These discharges have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. They are not expected to be a problem during the license renewal term.

with the following:

Discharges of metals have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. Discharges are monitored and controlled as part of the National Pollutant Discharge Elimination System (NPDES) permit process.

(15) Discharge of Biocides, Sanitary Wastes, and Minor Chemical Spills: The final rule amends Table B–1 by consolidating two Category 1 issues, ''Discharge of chlorine or other biocides'' and ''Discharge of sanitary wastes and minor chemical spills,'' both with an impact level of small, and naming the consolidated issue ''Discharge of biocides, sanitary wastes,

and minor chemical spills.'' The consolidated issue is a Category 1 issue with an impact level of small. Specifically, the final rule amends Table B–1 by removing the entries for ''Discharge of chlorine or other biocides'' and ''Discharge of sanitary wastes and minor chemical spills'' and adding an entry for ''Discharge of biocides, sanitary wastes, and minor chemical spills.'' The finding column entry for the new consolidated issue states,

> The effects of these discharges are regulated by Federal and State environmental agencies. Discharges are monitored and controlled as part of the NPDES permit process. These impacts have been small at operating nuclear power plants.

(16) *Surface Water Use Conflicts (Plants with Once-Through Cooling Systems):* ''Water use conflicts (plants with once-through cooling systems)'' remains a Category 1 issue with an impact level of small. The final rule amends Table B–1 by adding the word ''Surface'' to the title of this issue.

(17) *Surface Water Use Conflicts (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River):* The final rule amends Table B–1 by adding the term ''surface'' and removing the terms ''small'' and ''low flow'' from the title and the associated numerical definition contained in 10 CFR 51.53(c)(3)(ii)(A) for low flow rivers from this and other related river flow issues. This issue remains a Category 2 issue with an impact range of small to moderate. The final rule also amends the finding column entry by replacing the statement,

> The issue has been a concern at nuclear power plants with cooling ponds and at plants with cooling towers. Impacts on instream and riparian communities near these plants could be of moderate significance in some situations. See § 51.53(c)(3)(ii)(A).

with the following:

> Impacts could be of small or moderate significance, depending on makeup water requirements, water availability, and competing water demands.

The 1996 GEIS distinguished between surface water use impacts during low flow conditions on ''small'' versus ''large'' rivers. Any river, regardless of size, can experience low flow conditions of varying severity during periods of drought and changing conditions in the affected watersheds such as upstream diversions and use of river water. Similarly, the NRC has determined that the use of the term ''low flow'' in categorizing river flow is of little value considering that plants that withdraw makeup water from a river can experience low flow conditions and would be required to conduct a plant-specific assessment of water use conflicts.

(18) *Effects of Dredging on Surface Water Quality:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Effects of dredging on surface water quality,'' which evaluates the impacts of dredging to maintain intake and discharge structures at nuclear power plant facilities. This issue has an impact level of small. The finding column entry for this issue states,

> Dredging to remove accumulated sediments in the vicinity of intake and discharge structures and to maintain barge shipping has not been found to be a problem for surface water quality. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.

The impact of dredging on surface water quality was not considered in the 1996 GEIS and was not listed in Table B–1 prior to this final rule. Most plants have intake and discharge structures that must be maintained by periodic dredging of sediment accumulated in or on the structures. The NRC has found that dredging, while temporarily increasing turbidity in the source water body, generally has little long-term effect on water quality. In addition to maintaining intake and discharge structures, dredging is often done to keep barge slips and channels open to service the plant. Dredged material is most often disposed on property owned by the applicant and usually contains no hazardous materials. Dredging must be performed under a permit issued by the U.S. Army Corps of Engineers (the Corps) and consequently, each dredging action would be subject to a site-specific environmental review conducted by the Corps. Temporary impacts of dredging are measurable in general water quality terms, but the impacts have been shown to be small.

(19) *Temperature Effects on Sediment Transport Capacity:* There are no changes to this issue, and it remains a Category 1 issue with an impact level of small.

Groundwater Resources

(20) *Groundwater Contamination and Use (Non-Cooling System Impacts):* The final rule amends Table B–1 by expanding the scope of ''Impacts of refurbishment on groundwater use and quality'' issue to include the effects of continued nuclear power plant operations during the license renewal term. This Category 1 issue, with an impact level of small, was renamed ''Groundwater use and quality'' in the proposed rule.

The final rule also amends Table B–1 by changing the proposed rule's new Category 2 issue ''Groundwater and soil contamination,'' with an impact range of small to moderate (see 74 FR 38122, 38135), to Category 1, with an impact level of small. This issue was then consolidated with the ''Groundwater use and quality'' issue and renamed ''Groundwater contamination and use (non-cooling system impacts).'' These issues were consolidated because they consider the impact of industrial activities associated with the continued operations of a nuclear power plant (not directly related to cooling system effects) and refurbishment on groundwater use and quality. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Extensive dewatering during the original construction on some sites will not be repeated during refurbishment on any sites. Any plant wastes produced during refurbishment will be handled in the same manner as in current operating practices and are not expected to be a problem during the license renewal term.

with the following:

> Extensive dewatering is not anticipated from continued operations and refurbishment associated with license renewal. Industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals, and/or the use of wastewater ponds or lagoons have the potential to contaminate site groundwater, soil, and subsoil. Contamination is subject to State or Environmental Protection Agency regulated cleanup and monitoring programs. The application of best management practices for handling any materials produced or used during these activities would reduce impacts.

The consolidated Category 1 issue considers the impacts from groundwater use and the impacts on groundwater, soil, and subsoil from the industrial use of solvents, hydrocarbons, heavy metals, or other chemicals at nuclear power plant sites from continued operation during the license renewal term and refurbishment. The consolidated issue also includes the use of wastewater disposal ponds or lagoons and non-radionuclide, industrial contaminants released inadvertently or as effluents into the environment. Industrial practices at all nuclear power plants have the potential to contaminate groundwater and soil, especially on sites with unlined wastewater and storm water ponds or lagoons. Any contamination of this type is subject to characterization and clean-up under EPA or State regulated remediation and monitoring programs.

Non-radionuclide contaminants have been found in groundwater and soil

samples at some nuclear power plants during previous license renewal environmental reviews. Release of these contaminants into groundwater and soil degrades the quality of these resources, even if applicable groundwater quality standards are not exceeded. However, each site has its own program for handling chemicals, waste, and other hazardous materials in accordance with Federal and State regulations and is expected to employ best management practices. The use of wastewater disposal ponds or lagoons, whether lined or unlined, may increase the potential for groundwater and soil contamination. However, they are subject to discharge authorizations under NPDES and related State wastewater discharge permit programs.

The finding column of Table B–1 for ''Groundwater use and quality'' prior to this final rule, as analyzed in the 1996 GEIS, indicated that impacts of continued operations and refurbishment on groundwater use and quality would be small, as extensive dewatering is not anticipated. This finding was re-evaluated in the revised GEIS and is retained in Table B–1.

While the proposed rule's ''Groundwater and soil contamination'' issue was identified as a Category 2 issue, further consideration of the ''Groundwater and soil contamination'' issue and public comments revealed that the potential impacts on groundwater and soil quality from common industrial practices can be addressed generically, as these practices are common to all industrial facilities and are not unique to nuclear power plants. Moreover, as supported by the analysis in the revised GEIS, the NRC concludes that the overall impact of industrial practices on groundwater use and quality from past and current operations is small for all nuclear power plants and not expected to change appreciably during the license renewal term.

(21) *Groundwater Use Conflicts (Plants that Withdraw Less Than 100 Gallons per Minute [gpm]):* The final rule amends Table B–1 by renaming the ''Ground-water use conflicts (potable and service water; plants that use <100 gpm)'' issue as ''Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm]).'' It remains a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by making minor clarifying changes to the finding column entry for this issue. Specifically, the final rule replaces the entry statement ''Plants using less than 100 gpm are not expected to cause any ground-water conflicts,'' with ''Plants that withdraw less than 100 gpm are not expected to cause any groundwater use conflicts.''

(22) *Groundwater Use Conflicts (Plants that Withdraw More Than 100 Gallons per Minute [gpm]):* The final rule amends Table B–1 by consolidating two Category 2 issues, ''Groundwater use conflicts (potable and service water, and dewatering; plants that use >100 gpm)'' and ''Ground-water use conflicts (Ranney wells),'' each with an impact level range of small to large, and names the consolidated issue, ''Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm]).'' Because Ranney wells produce significantly more than 100 gpm, the Ranney wells issue was consolidated with the general issue of groundwater use conflicts for plants using more than 100 gpm of groundwater. The consolidated issue is a Category 2 issue, with an impact level range of small to large. The final rule further amends Table B–1 by removing the entries for ''Groundwater use conflicts (potable and service water, and dewatering; plants that use >100 gpm)'' and ''Ground-water use conflicts (Ranney wells)'' and adding an entry for ''Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm]).'' The finding column entry for the new consolidated issue states ''Plants that withdraw more than 100 gpm could cause groundwater use conflicts with nearby groundwater users.''

(23) *Groundwater Use Conflicts (Plants with Closed-Cycle Cooling Systems that Withdraw Makeup Water from a River):* The final rule amends Table B–1 by renaming ''Ground-water use conflicts (plants using cooling towers withdrawing makeup water from a small river)'' as ''Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).'' It remains a Category 2 issue, with an impact level range of small to large. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Water use conflicts may result from surface water withdrawals from small water bodies during low flow conditions which may affect aquifer recharge, especially if other ground-water or upstream surface water users come on line before the time of license renewal. See § 51.53(c)(3)(ii)(A).

with the following:

> Water use conflicts could result from water withdrawals from rivers during low-flow conditions, which may affect aquifer recharge. The significance of impacts would depend on makeup water requirements, water availability, and competing water demands.

The 1996 GEIS distinguished between surface water use impacts during low flow conditions on ''small'' versus ''large'' rivers. Any river, regardless of size, can experience low flow conditions of varying severity during periods of drought and changing conditions in the affected watersheds such as upstream diversions and use of river water. The NRC has thus determined that the use of the term ''small river'' or ''small water bodies'' is of little value considering that plants that withdraw makeup water from a river can experience low-flow conditions and would be required to conduct a plant-specific assessment of water use conflicts.

(24) *Groundwater Quality Degradation Resulting from Water Withdrawals:* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Ground-water quality degradation (Ranney wells)'' and ''Ground-water quality degradation (saltwater intrusion),'' each with an impact level of small, and names the consolidated issue, ''Groundwater quality degradation resulting from water withdrawals.'' The consolidated issue remains a Category 1 issue, with an impact level of small. The final rule further amends Table B–1 by removing the entries for ''Ground-water quality degradation (Ranney wells)'' and ''Ground-water quality degradation (saltwater intrusion)'' and, by adding an entry for ''Groundwater quality degradation resulting from water withdrawals.'' The finding column entry for the consolidated issue states ''Groundwater withdrawals at operating nuclear power plants would not contribute significantly to groundwater quality degradation.'' The two issues were consolidated as they both consider the possibility of groundwater quality becoming degraded as a result of plant operations drawing water of potentially lower quality into the aquifer.

(25) Groundwater Quality Degradation (Plants with Cooling Ponds in Salt Marshes): The final rule amends Table B–1 by revising the title of the issue ''Ground-water quality degradation (cooling ponds in salt marshes)'' to ''Groundwater quality degradation (plants with cooling ponds in salt marshes).'' The issue remains a Category 1 issue, with an impact level of small. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Sites with closed-cycle ponds may degrade ground-water quality. Because water in salt marshes is brackish, this is not a concern for plants located in salt marshes.

with the following:

Sites with closed-cycle cooling ponds could degrade groundwater quality. However, groundwater in salt marshes is naturally brackish and thus, not potable. Consequently, the human use of such groundwater is limited to industrial purposes.

The final rule change to the finding column entry reflects the NRC's response to a public comment on the proposed rule by: (1) Deleting the term ''plants'' to eliminate any confusion that the NRC might have meant marsh ''plants'' rather than ''nuclear power plants;'' and (2) clarifying that the focus of this issue is on the degradation of groundwater quality for human use. Brackish groundwater has limited human use, thus, any impacts on groundwater quality caused by continued operations and refurbishment associated with license renewal are not significant.

(26) Groundwater Quality Degradation (Plants with Cooling Ponds at Inland Sites): The final rule amends Table B–1 by revising the title of the issue ''Ground-water quality degradation (cooling ponds at inland sites)'' to ''Groundwater quality degradation (plants with cooling ponds at inland sites).'' The issue remains a Category 2 issue, with an impact level range of small to large. The final rule further amends Table B–1 by replacing the finding column entry, which states,

Sites with closed-cycle cooling ponds may degrade ground-water quality. For plants located inland, the quality of the ground water in the vicinity of the ponds must be shown to be adequate to allow continuation of current uses. See § 51.53(c)(3)(ii)(D).

with the following:

Inland sites with closed-cycle cooling ponds could degrade groundwater quality. The significance of the impact would depend on cooling pond water quality, site hydrogeologic conditions (including the interaction of surface water and groundwater), and the location, depth, and pump rate of water wells.

(27) *Radionuclides Released to Groundwater:* The final rule amends Table B–1 by adding a new Category 2 issue, ''Radionuclides released to groundwater,'' with an impact level range of small to moderate, to evaluate the potential impact of discharges of radionuclides from plant systems into groundwater. The finding column entry for this issue states,

Leaks of radioactive liquids from plant components and pipes have occurred at numerous plants. Groundwater protection programs have been established at all operating nuclear power plants to minimize the potential impact from any inadvertent releases. The magnitude of impacts would depend on site-specific characteristics.

This new Category 2 issue has been added to evaluate the potential impact to groundwater quality from the discharge of radionuclides from plant systems, piping, and tanks. This issue was added because within the past several years there have been events at nuclear power reactor sites that involved unknown, uncontrolled, and unmonitored releases of radioactive liquids into the groundwater. The issue is relevant to license renewal because this experience has shown that components and piping at nuclear power plants have the potential to leak radioactive material into the groundwater and degrade its quality. While the NRC's regulations in 10 CFR part 20 and in 10 CFR part 50 limit the amount of radioactive material released (i.e., from routine and inadvertent sources) from a nuclear power plant into the environment, the regulations are focused on protecting the public, not the quality of the groundwater. Therefore, as required by NEPA, the NRC must consider the potential impacts to the groundwater from radioactive liquids released into groundwater.

The majority of the inadvertent radioactive liquid release events involved tritium, which is a radioactive isotope of hydrogen. However, in some of the events, radioactive isotopes of cesium and strontium have also been released. Non-routine releases of radioactive liquids into the groundwater have occurred from plant systems and buried piping.

In 2006, the NRC's Executive Director for Operations chartered a task force to conduct a lessons-learned review of these incidents. On September 1, 2006, the Task Force issued its report: ''Liquid Radioactive Release Lessons Learned Task Force Report'' (ADAMS Accession No. ML062650312). A significant conclusion of the report dealt with the potential health impacts to the public from the inadvertent releases. Although there were numerous events where radioactive liquids were released to the groundwater in an unplanned, uncontrolled, and unmonitored fashion, based on the data available, the task force did not identify any instances where public health and safety was adversely impacted. However, the task force did not evaluate the impact of the releases to groundwater quality. The task force also identified that under the existing regulatory requirements, the potential exists for radioactive liquid releases from leaking systems to not be detected for a period of time and, therefore, the contaminants could migrate into groundwater.

In response to these groundwater events, NEI, which represents the nuclear industry, in 2007 committed to the NRC to develop a voluntary initiative for each nuclear power plant to have a site-specific groundwater protection program. NEI provided guidance to the nuclear industry (NEI 07–07, ADAMS Accession No. ML072610036) on the development and implementation of a groundwater protection program. The program covers the assessment of plant systems and components, site hydrogeology, and methods to detect leaks to determine the needs for each site-specific program. To monitor the actions of the nuclear industry, the NRC routinely inspects nuclear power plant licensees to verify continued implementation of the Groundwater Protection Initiative programs, to review records of identified leakage and spill events, to assess whether the source of the leak or spill was identified and mitigated, and to review any remediation actions taken for effectiveness.

On the basis of the information and experience with these groundwater events and the evaluation in the revised GEIS, the NRC concludes that the impact to groundwater quality from the release of radionuclides is dependent on site-specific variables and could be small or moderate, depending on the magnitude of the leak, radionuclides involved, and the response time of plant personnel to identify and stop the leak in a timely fashion. Therefore, ''Radionuclides released to groundwater'' is a Category 2 issue and, as such, a site-specific evaluation in the environmental report is needed for each application for license renewal. Similarly, the NRC will analyze this issue in the SEIS for each license renewal action.

Terrestrial Resources

(28) *Effects on Terrestrial Resources (Non-Cooling System Impacts):* The final rule amends Table B–1 by renaming the ''Refurbishment impacts'' issue as ''Effects on terrestrial resources (non-cooling system impacts).'' It remains a Category 2 issue, with an impact level range of small to large.[34] The issue, as set forth in the 1996 GEIS, addressed only the impacts upon terrestrial resources resulting from any refurbishment activities during the license renewal term. The analysis in the revised GEIS builds on the analysis in the 1996 GEIS to include the environmental impacts resulting from continued plant operations during the license renewal term. The final rule

[34] The proposed rule named the issue, ''Impacts of continued plant operations on terrestrial ecosystems'' (74 FR 38123, 38136; July 31, 2009).

further amends Table B–1 by replacing the finding column entry, which states,

> Refurbishment impacts are insignificant if no loss of important plant and animal habitat occurs. However, it cannot be known whether important plant and animal communities may be affected until the specific proposal is presented with the license renewal application. See § 51.53(c)(3)(ii)(E).

with the following:

> Impacts resulting from continued operations and refurbishment associated with license renewal may affect terrestrial communities. Application of best management practices would reduce the potential for impacts. The magnitude of impacts would depend on the nature of the activity, the status of the resources that could be affected, and the effectiveness of mitigation.

(29) *Exposure of Terrestrial Organisms to Radionuclides:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Exposure of terrestrial organisms to radionuclides.'' The new issue has been determined to have an impact level of small. The finding column entry for this issue states,

> Doses to terrestrial organisms from continued operations and refurbishment associated with license renewal are expected to be well below exposure guidelines developed to protect these organisms.

This new issue evaluates the potential impact of radionuclides on terrestrial organisms resulting from continued operations of a nuclear power plant during the license renewal term and refurbishment associated with license renewal. This issue was not evaluated in the 1996 GEIS. Subsequent to the publication of the 1996 GEIS, however, members of the public and various Federal and State agencies commented on the need to evaluate the potential impact of radionuclides on terrestrial organisms during plant-specific license renewal reviews.

The revised GEIS evaluates the potential impact of radionuclides on terrestrial biota at nuclear power plants from continued operations during the license renewal term. For the evaluation, site-specific radionuclide concentrations in environmental media (e.g., water, air, milk, crops, food products, sediment, and fish and other aquatic biota) were obtained from publicly available Radiological Environmental Monitoring Program (REMP) annual reports from 15 nuclear power plants. The REMP is conducted at every NRC licensed nuclear power plant to assess the environmental impacts from plant operations. This is done by collecting samples of environmental media from areas surrounding the plant for analysis to measure the amount of radioactivity, if any, in the samples. The media samples reflect the radiation exposure pathways to the public from radioactive effluents released by the nuclear power plant and from background radiation (i.e., cosmic sources, naturally-occurring radioactive material, including radon and global fallout). These 15 plants were selected to represent sites that reported a range of radionuclide concentrations in the sample media and included both boiling water reactors and pressurized water reactors. Site-specific radionuclide concentrations in water and sediments, as reported in the plant's REMP reports, were used in the calculations. The calculated radiation dose rates to terrestrial biota, based on exposure to radioactivity in the environmental media, were compared against radiation-safety guidelines issued by the U.S. Department of Energy (DOE), the International Atomic Energy Agency (IAEA), the National Council of Radiation Protection and Measurements (NCRP), and the International Commission on Radiological Protection (ICRP). The NRC concluded that the impacts of radionuclides on terrestrial biota from past and current normal operations are small for all nuclear power plants and should not change appreciably during the license renewal term.

(30) *Cooling System Impacts on Terrestrial Resources (Plants with Once-Through Cooling Systems or Cooling Ponds):* The final rule amends Table B–1 by renaming the ''Cooling pond impacts on terrestrial resources'' issue as ''Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).'' It remains a Category 1 issue, with an impact level of small. The analysis in the revised GEIS expands the scope of this issue to include plants with once-through cooling systems. This analysis concludes that the impacts on terrestrial resources from once-through cooling systems, as well as from cooling ponds, is of small significance at all plants. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Impacts of cooling ponds on terrestrial ecological resources are considered to be of small significance at all sites.

with the following:

> No adverse effects to terrestrial plants or animals have been reported as a result of increased water temperatures, fogging, humidity, or reduced habitat quality. Due to the low concentrations of contaminants in cooling system effluents, uptake and accumulation of contaminants in the tissues of wildlife exposed to the contaminated water or aquatic food sources are not expected to be significant issues.

(31) *Cooling Tower Impacts on Vegetation (Plants with Cooling Towers):* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Cooling tower impacts on crops and ornamental vegetation'' and ''Cooling tower impacts on native plants,'' both issues having an impact level of small, and names the consolidated issue, ''Cooling tower impacts on vegetation (plants with cooling towers).'' The consolidated issue is a Category 1 issue with an impact level of small. The two issues were consolidated to conform to the resource-based approach used in the revised GEIS. With the recent trend of replacing lawns with native vegetation, some ornamental plants and crops are native plants, and the original separation into two issues is unnecessary and cumbersome. The final rule further amends Table B–1 by removing the entries for ''Cooling tower impacts on crops and ornamental vegetation'' and ''Cooling tower impacts on native plants,'' and by adding an entry for ''Cooling tower impacts on vegetation (plants with cooling towers).'' The finding column entry for the new consolidated issue states,

> Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have the potential to affect adjacent vegetation, but these impacts have been small at operating nuclear power plants and are not expected to change over the license renewal term.

(32) *Bird Collisions with Plant Structures and Transmission Lines:* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Bird collisions with cooling towers'' and ''Bird collision with power lines,'' both issues having an impact level of small. The final rule also expands the scope of the consolidated issue to address collisions with all plant structures and names the issue, ''Bird collisions with plant structures and transmission lines.'' The consolidated issue is a Category 1 issue with an impact level of small. The two issues were consolidated to conform to the resource-based approach used in the revised GEIS. The final rule further amends Table B–1 by removing the entries for ''Bird collisions with cooling towers'' and ''Bird collision with power lines,'' and by adding an entry for ''Bird collisions with plant structures and transmission lines.'' The finding column entry for the new consolidated issue states,

Bird collisions with cooling towers and other plant structures and transmission lines occur at rates that are unlikely to affect local or migratory populations and the rates are not expected to change.

The final rule further amends Table B–1 by appending a footnote to the issue column entry for ''Bird collisions with plant structures and transmission lines,'' concerning the extent to which transmission lines and their associated right of ways have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment.

(33) *Water Use Conflicts with Terrestrial Resources (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River):* The final rule amends Table B–1 by adding a new Category 2 issue, ''Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river),'' to evaluate water use conflict impacts with terrestrial resources in riparian communities. The 1996 GEIS already addresses the resource aspects of this issue, and 10 CFR 51.53(c)(3)(ii)(A) requires a plant-specific analysis of the impacts of surface water withdrawals from rivers for cooling pond or cooling tower makeup on riparian ecological communities. However, this stand-alone issue was created to clearly separate out the related aspects and potential impacts on terrestrial, riparian communities associated with surface water withdrawals from a river for consumptive cooling water uses. The new issue has an impact level range of small to moderate. The finding column entry for this issue states,

Impacts on terrestrial resources in riparian communities affected by water use conflicts could be of moderate significance.

As described in the revised GEIS, such impacts could occur when water that supports these resources is diminished because of decreased availability due to droughts; increased water demand for agricultural, municipal, or industrial usage; or a combination of these factors. The potential range of impact levels at plants, subject to license renewal, with cooling ponds or cooling towers using makeup water from a river cannot be generically determined. The NRC has also removed the term ''low flow'' from the title of this issue, as set forth in the proposed rule, and other related river flow issues in the final rule as previously discussed in this section (*see* Issue 17, ''Surface Water Use Conflicts (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)'').

(34) *Transmission Line Right-of-Way (ROW) Management Impacts on Terrestrial Resources:* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Power line right-of-way management (cutting and herbicide application)'' and ''Floodplains and wetland on power line right-of-way,'' each with an impact level of small, and names the consolidated issue, ''Transmission line right-of-way (ROW) management impacts on terrestrial resources.'' The consolidated issue is a Category 1 issue, with an impact level of small. The two issues were consolidated to conform to the resource-based approach used in the revised GEIS. The final rule further amends Table B–1 by removing the entries for ''Power line right-of-way management (cutting and herbicide application)'' and ''Floodplains and wetland on power line right-of-way,'' and, by adding an entry for ''Transmission line right-of-way (ROW) management impacts on terrestrial resources.'' The finding column entry for the consolidated issue states,

Continued ROW management during the license renewal term is expected to keep terrestrial communities in their current condition. Application of best management practices would reduce the potential for impacts.

The final rule further amends Table B–1 by appending a footnote to the issue column entry for ''Transmission line right-of-way (ROW) management impacts on terrestrial resources,'' concerning the extent to which transmission lines and their associated rights of way have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment.

(35) Electromagnetic Fields on Flora and Fauna (Plants, Agricultural Crops, Honeybees, Wildlife, Livestock): There are no changes to this issue, and it remains a Category 1 issue with a small level of impact. The final rule amends Table B–1 by appending a footnote to the issue column entry for ''Electromagnetic Fields on Flora and Fauna (Plants, Agricultural Crops, Honeybees, Wildlife, Livestock),'' concerning the extent to which transmission lines and their associated rights of way have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment.

Aquatic Resources

(36) *Impingement and Entrainment of Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds):* The final rule amends Table B–1 by consolidating two Category 2 issues, ''Entrainment of fish and shellfish in early life stages (for plants with once-through cooling and cooling pond heat dissipation systems)'' and ''Impingement of fish and shellfish (for plants with once-through cooling and cooling pond heat dissipation systems),'' both with impact level ranges of small to large, and names the consolidated issue, ''Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).'' The consolidated issue is a Category 2 issue with an impact level range of small to large. The final rule further amends Table B–1 by removing the entries for ''Entrainment of fish and shellfish in early life stages (for plants with once-through cooling and cooling pond heat dissipation systems)'' and ''Impingement of fish and shellfish (for plants with once-through cooling and cooling pond heat dissipation systems),'' and, by adding an entry for ''Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).'' The finding column entry for the consolidated issue states,

The impacts of impingement and entrainment are small at many plants, but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems, depending on cooling system withdrawal rates and volumes and the aquatic resources at the site.

For the revised GEIS, these issues were consolidated to facilitate the review process in keeping with the resource-based approach and to allow for a more complete analysis of the environmental impact. Nuclear power plants typically conduct separate sampling programs to estimate the numbers of organisms entrained and impinged, which explains the original separation of these issues. However, it is the consolidated effects of entrainment and impingement that reflect the total impact of the cooling system intake on the resource. Environmental conditions are different at each nuclear power plant site, and impacts cannot be determined generically.

(37) *Impingement and Entrainment of Aquatic Organisms (Plants with Cooling Towers):* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Entrainment of fish and shellfish in early life stages (for plants with cooling tower-based heat dissipation systems)'' and ''Impingement of fish and shellfish (for plants with cooling tower-based heat dissipation systems),'' both with impact levels of small, and names the consolidated issue, ''Impingement and entrainment of aquatic organisms (plants with cooling towers).'' The consolidated issue is a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by removing the entries for ''Entrainment of fish and shellfish in early life stages (for plants with cooling tower-based heat dissipation systems)'' and ''Impingement of fish and shellfish (for plants with cooling tower-based heat dissipation systems),'' and by adding an entry for ''Impingement and entrainment of aquatic organisms (plants with cooling towers).'' The finding column entry for the consolidated issue states,

> Impingement and entrainment rates are lower at plants that use closed-cycle cooling with cooling towers because the rates and volumes of water withdrawal needed for makeup are minimized.

The two issues have been consolidated given their similar nature and to facilitate the environmental review process consistent with the resource-based approach in the revised GEIS.

(38) Entrainment of phytoplankton and zooplankton (all plants): There are no changes to this issue, and it remains a Category 1 issue with an impact level of small. The proposed rule had consolidated two Category 2 issues, ''Entrainment of fish and shellfish in early life stages (for plants with once-through cooling and cooling pond heat dissipation systems)'' and ''Impingement of fish and shellfish (for plants with once-through cooling and cooling pond heat dissipation systems)'' with the Category 1 issue, ''Entrainment of phytoplankton and zooplankton (for all plants)'' (74 FR 38124, 38136; July 31, 2009). Under the proposed rule, the consolidated issue would have been a Category 2 issue, with an impact range of small to large. Subsequent to the publication of the proposed rule, the NRC determined that such consolidation would have the effect of making ''Entrainment of phytoplankton and zooplankton (all plants),'' which is an issue generic to all plants (Category 1), a site-specific issue (Category 2). As there is no basis to support making the ''Entrainment of phytoplankton and zooplankton (all plants)'' a site-specific issue, the NRC determined not to adopt the proposed rule change. Instead, only the two Category 2 issues were consolidated (*see* Issue 36), and this issue remains separate.

(39) *Thermal Impacts on Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds):* The final rule amends Table B–1 by renaming the issue, ''Heat shock (for plants with once-through and cooling pond heat dissipation systems)'' as ''Thermal Impacts on Aquatic Organisms (plants with once-through cooling systems or cooling ponds).'' It remains a Category 2 issue with an impact level range of small to large. The final rule further amends Table B–1 by replacing the finding column entry for this issue, which states,

> Because of continuing concerns about heat shock and the possible need to modify thermal discharges in response to changing environmental conditions, the impacts may be of moderate or large significance at some plants. See § 51.53(c)(3)(ii)(B).

with the following:

> Most of the effects associated with thermal discharges are localized and are not expected to affect overall stability of populations or resources. The magnitude of impacts, however, would depend on site-specific thermal plume characteristics and the nature of aquatic resources in the area.

Environmental conditions are different at each nuclear power plant site, and thermal impacts associated with once-through and cooling pond heat dissipation systems cannot be determined generically. The proposed rule had consolidated the Category 2 issue, ''Heat shock (for plants with once-through and cooling pond heat dissipation systems)'' with four Category 1 issues, ''Cold shock (for all plants),'' ''Thermal plume barrier to migrating fish (for all plants),'' ''Distribution of aquatic organisms (for all plants),'' and ''Premature emergence of aquatic insects (for all plants)'' (74 FR 38124, 38136; July 31, 2009). These issues were proposed for consolidation to facilitate the environmental review process because they are all caused by thermal effects. The final rule consolidates these four Category 1 issues with another Category 1 issue, ''Stimulation of nuisance organisms (e.g., shipworms),'' as Issue 41, ''Infrequently reported thermal impacts (all plants),'' as described later in this section.

(40) *Thermal Impacts on Aquatic Organisms (Plants with Cooling Towers):* The final rule amends Table B–1 by renaming the issue ''Heat shock (for plants with cooling-tower-based heat dissipation systems)'' as ''Thermal Impacts on Aquatic Organisms (Plants with Cooling Towers).'' It remains a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by replacing the finding column entry for this issue, which states, ''Heat shock has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term,'' with the following, ''Thermal effects associated with plants that use cooling towers are expected to be small because of the reduced amount of heated discharge.''

The proposed rule had consolidated the Category 1 issue, ''Heat shock (for plants with cooling-tower-based heat dissipation systems)'' with four other Category 1 issues, ''Cold shock (for all plants),'' ''Thermal plume barrier to migrating fish (for all plants),'' ''Distribution of aquatic organisms (for all plants),'' and ''Premature emergence of aquatic insects (for all plants)'' (74 FR 38124, 38136). These issues were proposed for consolidation to facilitate the environmental review process because they are all caused by thermal effects. The final rule consolidates these four Category 1 issues with another Category 1 issue, ''Stimulation of nuisance organisms (e.g., shipworms),'' as Issue 41, ''Infrequently reported thermal impacts (all plants),'' as described in the following paragraphs.

(41) *Infrequently Reported Thermal Impacts (All Plants):* The final rule amends Table B–1 by consolidating five Category 1 issues, ''Cold shock (for all plants),'' ''Thermal plume barrier to migrating fish (for all plants),'' ''Distribution of aquatic organisms (for all plants),'' ''Premature emergence of aquatic insects (for all plants),'' and ''Stimulation of Nuisance Organisms (e.g., Shipworms),'' each with an impact level of small, and names the consolidated issue, ''Infrequently reported thermal impacts (all plants).'' The consolidated issue is a Category 1 issue, with an impact level of small. The final rule further amends Table B–1 by removing the entries for ''Cold shock (for all plants),'' ''Thermal plume barrier to migrating fish (for all plants),'' ''Distribution of aquatic organisms (for all plants),'' ''Premature emergence of aquatic insects (for all plants),'' and ''Stimulation of Nuisance Organisms (e.g., Shipworms),'' and, by adding an entry for ''Infrequently reported thermal impacts (all plants).'' The finding column entry for the new consolidated issue states,

Continued operations during the license renewal term are expected to have small thermal impacts with respect to the following:

Cold shock has been satisfactorily mitigated at operating nuclear plants with once-through cooling systems, has not endangered fish populations or been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds, and is not expected to be a problem.

Thermal plumes have not been found to be a problem at operating nuclear power plants and are not expected to be a problem.

Thermal discharge may have localized effects but is not expected to affect the larger geographical distribution of aquatic organisms.

Premature emergence has been found to be a localized effect at some operating nuclear power plants but has not been a problem and is not expected to be a problem.

Stimulation of nuisance organisms has been satisfactorily mitigated at the single nuclear power plant with a once-through cooling system where previously it was a problem. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem.

The five issues are consolidated to facilitate the environmental review process because they are all caused by thermal effects resulting from operation of a plant's cooling system. Previous license renewal reviews conducted by the NRC have shown that the previously described thermal issues have not been a problem at operating nuclear power plants and would not change during the license renewal term, and so no future impacts are anticipated.

(42) *Effects of Cooling Water Discharge on Dissolved Oxygen, Gas Supersaturation, and Eutrophication:* The final rule amends Table B–1 by consolidating three Category 1 issues, ''Eutrophication,'' ''Gas supersaturation (gas bubble disease),'' and ''Low dissolved oxygen in the discharge,'' each with an impact level of small, and names the consolidated issue, ''Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication.'' The consolidated issue is a Category 1 issue, with an impact level of small. The three issues are consolidated given their similar nature and to facilitate the environmental review process. The final rule further amends Table B–1 by removing the entries for ''Eutrophication,'' ''Gas supersaturation (gas bubble disease),'' and ''Low dissolved oxygen in the discharge,'' and, by adding an entry for ''Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication.'' The finding column entry for the new consolidated issue states,

Gas supersaturation was a concern at a small number of operating nuclear power plants with once-through cooling systems but has been mitigated. Low dissolved oxygen was a concern at one nuclear power plant with a once-through cooling system but has been mitigated. Eutrophication (nutrient loading) and resulting effects on chemical and biological oxygen demands have not been found to be a problem at operating nuclear power plants.

(43) *Effects of Non-Radiological Contaminants on Aquatic Organisms:* The final rule amends Table B–1 by renaming the issue ''Accumulation of contaminants in sediments or biota'' as ''Effects of non-radiological contaminants on aquatic organisms.'' The renamed issue remains a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by replacing the finding column entry, which states,

Accumulation of contaminants has been a concern at a few nuclear power plants but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal. It is not expected to be a problem during the license renewal term.

with the following:

Best management practices and discharge limitations of NPDES permits are expected to minimize the potential for impacts to aquatic resources during continued operations and refurbishment associated with license renewal. Accumulation of metal contaminants has been a concern at a few nuclear power plants, but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal.

(44) *Exposure of Aquatic Organisms to Radionuclides:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Exposure of Aquatic Organisms to Radionuclides,'' with an impact level of small. The finding column entry for this issue states,

Doses to aquatic organisms are expected to be well below exposure guidelines developed to protect these aquatic organisms.

The issue has been added to evaluate the potential impact of radionuclide discharges upon aquatic organisms, based on comments from members of the public and Federal and State agencies raised during the license renewal process for various plants.

The revised GEIS evaluates the potential impact of radionuclides on aquatic organisms at nuclear power plants from continued operations during the license renewal term. For the evaluation, site-specific radionuclide concentrations in environmental media (e.g., water, air, milk, crops, food products, sediment, and fish and other aquatic biota) were obtained from publicly available REMP annual reports from 15 nuclear power plants. The REMP is conducted at every NRC licensed nuclear power plant to assess the environmental impacts from plant operations. This is done by collecting samples of environmental media from areas surrounding the plant for analysis to measure the amount of radioactivity, if any, in the samples. The media samples reflect the radiation exposure pathways to the public from radioactive effluents released by the nuclear power plant and from background radiation (i.e., cosmic sources, naturally-occurring radioactive material, including radon and global fallout). These 15 plants were selected to represent sites that reported a range of radionuclide concentrations in the sample media and included both boiling water reactors and pressurized water reactors. Site-specific radionuclide concentrations in water and sediments, as reported in the plant's REMP reports, were used in the calculations. The calculated radiation dose rates to aquatic organisms, based on exposure to radioactivity in the environmental media, were compared against radiation-safety guidelines issued by DOE, IAEA, NCRP, and ICRP. The NRC concluded that the impacts of radionuclides on aquatic organisms from past and current normal operations are small for all nuclear power plants and should not change appreciably during the license renewal term.

(45) *Effects of Dredging on Aquatic Organisms:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Effects of dredging on aquatic organisms,'' with an impact level of small, to evaluate the impacts of dredging on aquatic organisms. The finding column entry for this issue states,

Dredging at nuclear power plants is expected to occur infrequently, would be of relatively short duration, and would affect relatively small areas. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.

Licensees conduct dredging to maintain intake and discharge structures at nuclear power plant facilities and in some cases, to maintain barge slips. Dredging may disturb or remove benthic communities. In general, maintenance dredging for nuclear power plant operations occur infrequently, is of relatively short duration, and affects relatively small areas. Dredging is performed under a permit issued by the U.S. Army Corps of Engineers and consequently, each dredging action is subject to a site-specific environmental review conducted by the Corps. Dredging

activities may also require permits from various State or local agencies.

(46) *Water Use Conflicts with Aquatic Resources (Plants with Cooling Ponds or Cooling Towers using Makeup Water from a River):* The final rule amends Table B–1 by adding a new Category 2 issue, ''Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river),'' with an impact level range of small to moderate, to evaluate water use conflicts with aquatic resources in stream communities. The 1996 GEIS already addresses the resource aspects of this issue, and 10 CFR 51.53(c)(3)(ii)(A) requires a plant-specific analysis of the impacts of surface water withdrawals from rivers for cooling pond or cooling tower makeup on stream (i.e., aquatic) ecological communities. However, this stand-alone issue was created to clearly separate out the related aspects and potential impacts on aquatic communities associated with surface water withdrawals from a river for consumptive cooling water uses.

The finding column entry for this issue states,

> Impacts on aquatic resources in stream communities affected by water use conflicts could be of moderate significance in some situations.

Such impacts could occur when water that supports these resources is diminished because of decreased availability due to droughts; increased water demand for agricultural, municipal, or industrial usage; or a combination of these factors. The potential range of impact levels at plants, subject to license renewal, with cooling ponds or cooling towers using makeup water from a river cannot be generically determined. The NRC has also removed the term ''low flow'' from the title of this issue, as set forth in the proposed rule, and other related river flow issues in the final rule as previously discussed in this section (*see* Issue 17, ''Surface Water Use Conflicts (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)'').

(47) *Effects on Aquatic Resources (Non-Cooling System Impacts):* The final rule amends Table B–1 by renaming the ''Refurbishment'' issue as ''Effects on aquatic resources (non-cooling system impacts).'' [35] It remains a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> During plant shutdown and refurbishment there will be negligible effects on aquatic biota because of a reduction of entrainment and impingement of organisms or a reduced release of chemicals.

with the following:

> Licensee application of appropriate mitigation measures is expected to result in no more than small changes to aquatic communities from their current condition.

(48) *Impacts of Transmission Line Right-of-Way (ROW) Management on Aquatic Resources:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Impacts of transmission line right-of-way (ROW) management on aquatic resources,'' with an impact level of small, to evaluate the impact of transmission line ROW management on aquatic resources during the license renewal term. The finding column entry for this issue states,

> Licensee application of best management practices to ROW maintenance is expected to result in no more than small impacts to aquatic resources.

Impacts on aquatic resources from transmission line ROW maintenance could occur as a result of the direct disturbance of aquatic habitats, soil erosion, changes in water quality (from sedimentation and thermal effects), or inadvertent releases of chemical contaminants from herbicide use. As described in the revised GEIS, the NRC expects any impact on aquatic resources resulting from transmission line ROW maintenance to be small, short term, and localized for all plants because of licensee application of best management practices.

The final rule further amends Table B–1 by appending a footnote to the issue column entry for ''Impacts of Transmission Line Right-of-Way (ROW) Management on Aquatic Resources,'' concerning the extent to which transmission lines and their associated ROW have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment.

(49) Losses from Predation, Parasitism, and Disease Among Organisms Exposed to Sublethal Stresses: There are no changes to this issue, and it remains a Category 1 issue, with an impact level of small.

Special Status Species and Habitats

(50) *Threatened, Endangered, and Protected Species and Essential Fish Habitat:* The final rule amends Table B–1 by renaming the issue ''Threatened or endangered species'' as ''Threatened, endangered, and protected species and essential fish habitat.'' The final rule expands the scope of the issue to include essential fish habitats protected under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The renamed and expanded issue is a Category 2 issue. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Generally, plant refurbishment and continued operations are not expected to adversely affect threatened or endangered species. However, consultation with appropriate agencies would be needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected. See § 51.53(c)(3)(ii)(E).

with the following:

> The magnitude of impacts on threatened, endangered, and protected species, critical habitat, and essential fish habitat would depend on the occurrence of listed species and habitats and the effects of power plant systems on them. Consultation with appropriate agencies would be needed to determine whether special status species or habitats are present and whether they would be adversely affected by continued operations and refurbishment associated with license renewal.

The final rule also amends Table B–1 by removing the words ''SMALL, MODERATE, or LARGE'' from the finding column entry because the Endangered Species Act (ESA) requires other findings.[36] In complying with the ESA, the NRC determines whether the effects of continued nuclear power plant operations and refurbishment (1) would have no effect, (2) are not likely to adversely affect, (3) are likely to adversely affect, or (4) are likely to jeopardize the listed species or adversely modify the designated critical habitat of Federally listed species populations or their critical habitat during the license renewal term. For listed species where the NRC has found that its action is ''likely to adversely affect'' the species or habitat, the NRC may further characterize the effects as ''is [or is not] likely to jeopardize listed species or adversely modify designated critical habitat.''

Similarly, the MSA also requires other findings. In complying with the MSA, the NRC determines whether the effects

[35] The proposed rule had renamed this issue ''Refurbishment impacts on aquatic resources.'' (74 FR 38125, 38136; July 31, 2009).

[36] The proposed rule did not reflect this change (74 FR 38125, 38137; July 31, 2009).

of continued nuclear power plant operations and refurbishment associated with license renewal would have: (1) No adverse impact, (2) minimal adverse impact, or (3) substantial adverse impact to the essential habitat of federally managed fish populations during the license renewal term. Therefore, the NRC believes that reporting its ESA and MSA findings instead of the ''SMALL, MODERATE, or LARGE'' significance levels of impact will clarify the results.

Historic and Cultural Resources

(51) *Historic and Cultural Resources:* The final rule amends Table B–1 by renaming the issue ''Historic and archaeological resources'' as ''Historic and cultural resources.'' It remains a Category 2 issue. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Generally, plant refurbishment and continued operations are expected to have no more than small adverse impacts on historic and archaeological resources. However, the National Historic Preservation Act requires the Federal agency to consult with the State Historic Preservation Officer to determine whether there are properties present that require protection. See § 51.53(c)(3)(ii)(K).

with the following:

> Continued operations and refurbishment associated with license renewal are expected to have no more than small impacts on historic and cultural resources located onsite and in the transmission line ROW because most impacts could be mitigated by avoiding those resources. The National Historic Preservation Act (NHPA) requires the Federal agency to consult with the State Historic Preservation Officer (SHPO) and appropriate Native American Tribes to determine the potential effects on historic properties and mitigation, if necessary.

The final rule further amends Table B–1 by removing the words ''SMALL, MODERATE, or LARGE'' from the finding column entry [37] because the National Historic Preservation Act (NHPA) requires the NRC to determine whether historic properties are present on or near the project site, and if so, whether the license renewal decision would result in any adverse effect upon such properties. Thus, the NRC in its plant-specific environmental review makes the following determinations: no historic properties present; historic properties are present, but not adversely affected; or there is an adverse effect.

If continued operations and refurbishment associated with license renewal result in any adverse effects, the NHPA Section 106 process requires consultation with the requisite State Historic Preservation Officer (SHPO) and if appropriate, the requisite Tribal Historic Preservation Officer. The license renewal applicant is typically an active participant in such consultation, and the applicant may agree to commit to carrying out the appropriate mitigation measures. If an agreement is reached, the parties will execute a Memorandum of Agreement. Therefore, the NRC believes that reporting its NHPA findings in the plant-specific SEIS, instead of the ''SMALL, MODERATE, or LARGE'' significance levels of impact, will clarify the results.

Socioeconomics

(52) *Employment and Income, Recreation and Tourism:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Employment and income, recreation and tourism,'' which includes the ''tourism and recreation'' portion of a current Table B–1 Category 1 issue, ''Public services: public safety, social services, and tourism and recreation.'' The issue has an impact level of small. The final rule consolidates the tourism and recreation portion with the new generic analysis to cover employment and income given the similar nature of these issues and to facilitate the environmental review process. The revised GEIS provides an analysis of this consolidated issue and concludes that the impacts are generic to all plants undergoing license renewal. The finding column entry for this issue states,

> Although most nuclear plants have large numbers of employees with higher than average wages and salaries, employment, income, recreation, and tourism impacts from continued operations and refurbishment associated with license renewal are expected to be small.

(53) *Tax Revenues:* The impact of changes to tax revenues was discussed in the 1996 GEIS, but was not listed in Table B–1. The final rule amends Table B–1 by adding a new Category 1 issue, ''Tax revenues,'' to evaluate the impacts of license renewal on tax revenues. The issue has an impact level of small. The finding column entry for this issue states,

> Nuclear plants provide tax revenue to local jurisdictions in the form of property tax payments, payments in lieu of tax (PILOT), or tax payments on energy production. The amount of tax revenue paid during the license renewal term as a result of continued operations and refurbishment associated with license renewal is not expected to change.

Refurbishment activities, such as steam generator and vessel head replacement, have not had a noticeable effect on the value of nuclear power plants, thus changes in tax revenues are not anticipated from future refurbishment activities. Refurbishment activities involve the one-for-one replacement of existing components and are generally not considered a taxable improvement. Also, new property tax assessments; proprietary payments in lieu of tax stipulations, settlements, and agreements; and State tax laws are continually changing the amounts paid to taxing jurisdictions by nuclear power plant owners, and these occur independent of license renewal and refurbishment activities.

(54) *Community Services and Education:* The final rule amends Table B–1 by reclassifying two Category 2 issues, ''Public services: public utilities,'' with an impact level range of small to moderate, and ''Public services, education (refurbishment),'' with an impact level range of small to large, as Category 1 issues. The final rule consolidates these two issues with the Category 1 issue, ''Public services, education (license renewal term),'' which has an impact level of small, and the ''Public safety and social service'' portion of the Category 1 issue, ''Public services: public safety, social services, and tourism and recreation,'' which also has an impact level of small.[38] The final rule names the consolidated issue, ''Community services and education,'' and classifies it as a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by removing the entries for ''Public services: public utilities,'' ''Public services, education (refurbishment),'' ''Public services, education (license renewal term),'' and ''Public services: public safety, social services, and tourism and recreation,'' and by adding the entry for ''Community services and education.'' The finding column entry for the ''Community services and education'' issue states,

> Changes resulting from continued operations and refurbishment associated with license renewal to local community and educational services would be small. With little or no change in employment at the licensee's plant, value of the power plant, payments on energy production, and PILOT payments expected during the license renewal term, community and educational services would not be affected by continued power plant operations.

The four issues are consolidated because all public services are equally affected by changes in plant operations and refurbishment associated with

[37] The proposed rule did not reflect this change (74 FR 38125, 38137; July 31, 2009).

[38] The ''tourism and recreation'' portion of the ''Public services: public safety, social services, and tourism and recreation'' issue was consolidated with the new generic analysis concerning employment and income to form the consolidated Category 1 issue, ''Employment and income, recreation and tourism'' (see Issue 52).

license renewal. Any changes in the number of workers at a nuclear power plant will affect demand for public services from local communities. Nevertheless, past environmental reviews conducted by the NRC since the issuance of the 1996 GEIS have shown that the number of workers at relicensed nuclear power plants has not changed significantly because of license renewal. Thus, no significant impacts on community services are anticipated from future license renewals. In addition, refurbishment activities, such as steam generator and vessel head replacement, have not required the large numbers of workers and the months of time that was conservatively analyzed in the 1996 GEIS, and as such, significant impacts on community services are no longer anticipated. Combining the four issues also facilitates the environmental review process.

(55) *Population and Housing:* The final rule amends Table B–1 by renaming the Category 2 issue, ''Housing impacts,'' with an impact level range of small to large, to ''Population and housing.'' The final rule reclassifies this issue as a Category 1 issue with an impact level of small. As described in the revised GEIS, the availability and value of housing are directly affected by changes in population. The final rule further amends Table B–1 by removing the entry for ''Housing impacts,'' and by adding an entry for ''Population and housing.'' The finding column entry for this issue states,

> Changes resulting from continued operations and refurbishment associated with license renewal to regional population and housing availability and value would be small. With little or no change in employment at the licensee's plant expected during the license renewal term, population and housing availability and values would not be affected by continued power plant operations.

As described in the revised GEIS, the NRC has determined that the impacts of continued operations and refurbishment activities on population and housing during the license renewal term would be small. Moreover, any impacts are not dependent on the socioeconomic setting of the nuclear power plant and are generic to all plants.

(56) *Transportation:* The final rule amends Table B–1 by reclassifying the Category 2 issue, ''Public services, Transportation,'' with an impact level range of small to large, as a Category 1 issue with an impact level of small, and renaming it ''Transportation.'' The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Transportation impacts (level of service) of highway traffic generated during plant refurbishment and during the term of the renewed license are generally expected to be of small significance. However, the increase in traffic associated with additional workers and the local road and traffic control conditions may lead to impacts of moderate or large significance at some sites. See § 51.53(c)(3)(ii)(J).

with the following:

> Changes resulting from continued operations and refurbishment associated with license renewal to traffic volumes would be small.

As described in the revised GEIS, the NRC has determined that the numbers of workers have not changed significantly due to license renewal, so transportation impacts from continued operations and refurbishment associated with license renewal are no longer expected to be significant.

Human Health

(57) *Radiation Exposures to the Public:* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Radiation exposures to the public during refurbishment'' and ''Radiation exposure to public (license renewal term)'' and names the consolidated issue, ''Radiation exposures to the public.'' The consolidated issue is a Category 1 issue with an impact level of small. These issues are consolidated given their similar nature and to facilitate the environmental review process. The final rule amends Table B–1 by removing the entries for ''Radiation exposures to the public during refurbishment'' and ''Radiation exposure to public (license renewal term)'' and by adding an entry for ''Radiation exposures to the public.'' The finding column entry for this consolidated issue states,

> Radiation doses to the public from continued operations and refurbishment associated with license renewal are expected to continue at current levels, and would be well below regulatory limits.

(58) *Radiation Exposures to Plant Workers:* The final rule amends Table B–1 by consolidating two Category 1 issues, ''Occupational radiation exposures during refurbishment'' and ''Occupational radiation exposures (license renewal term)'' and names the consolidated issue, ''Radiation exposures to plant workers.'' The consolidated issue is a Category 1 issue with an impact level of small. These issues are consolidated given their similar nature and to facilitate the environmental review process. The final rule amends Table B–1 by removing the entries ''Occupational radiation exposures during refurbishment'' and ''Occupational radiation exposures (license renewal term)'' and by adding an entry for ''Radiation exposures to plant workers.'' The finding column entry for the combined issue states,

> Occupational doses from continued operations and refurbishment associated with license renewal are expected to be within the range of doses experienced during the current license term and would continue to be well below regulatory limits.

(59) *Human Health Impact from Chemicals:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Human health impact from chemicals,'' to evaluate the potential impacts to plant workers and members of the public from exposure to chemicals. The new issue has an impact level of small. The finding column entry for this issue states,

> Chemical hazards to plant workers resulting from continued operations and refurbishment associated with license renewal are expected to be minimized by the licensee implementing good industrial hygiene practices as required by permits and Federal and State regulations. Chemical releases to the environment and the potential for impacts to the public are expected to be minimized by adherence to discharge limitations of NPDES and other permits.

The evaluation addresses the potential impact of chemicals on human health resulting from normal operations of a nuclear power plant during the license renewal term. Impacts of chemical exposure to human health are considered to be small if the use of chemicals within the plant is in accordance with industrial safety guides and discharges of chemicals to water bodies are within effluent limitations designed to ensure protection of water quality and aquatic life.

The disposal of hazardous chemicals used at nuclear power plants by licensees is subject to the RCRA and the CWA (which requires licensees to hold an NPDES permit). Adherence by the licensee to these statutory requirements should minimize adverse impacts to the environment, workers, and the public. It is anticipated that all plants would continue to operate in compliance with all applicable permits and that no mitigation measures beyond those implemented during the current license term would be warranted as a result of license renewal.

A review of the documents, as referenced in the revised GEIS, operating monitoring reports, and consultations with utilities and regulatory agencies that were performed for the 1996 GEIS, indicated that the

effects of the discharge of chlorine and other biocides on water quality have been of small significance for all power plants. Small quantities of biocides are readily dissipated and/or are chemically altered in the body of water receiving them, so significant cumulative impacts to water quality would not be expected. The NRC expects no major changes in the operation of plant cooling systems during the license renewal term, so no changes are anticipated in the effects of biocide discharges on the quality of the receiving waters. The EPA and the States regulate discharges of sanitary wastes and heavy metals through NPDES permits. The NRC considers discharges that do not violate the permit limits to be of small significance. The effects of minor chemical discharges and spills on water quality are also expected to be of small significance during the license renewal term, and the appropriate regulating agencies would require the licensee to mitigate these discharges and spills as needed.

(60) *Microbiological Hazards to the Public (Plants with Cooling Ponds or Canals or Cooling Towers that Discharge to a River):* The final rule amends Table B–1 by renaming the ''Microbiological organisms (public health) (plants using lakes or canals, or cooling towers or cooling ponds that discharge to a small river)'' issue as ''Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river).'' The issue remains a Category 2 issue, with an impact level range of small to large. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals that discharge to small rivers. Without site-specific data, it is not possible to predict the effects generically. See § 51.53(c)(3)(ii)(G).

with the following:

> These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals, or that discharge into rivers. Impacts would depend on site-specific characteristics.

(61) *Microbiological Hazards to Plant Workers:* The final rule amends Table B–1 by renaming the ''Microbiological organisms (occupational health)'' issue as ''Microbiological hazards to plant workers.'' It remains a Category 1 issue with an impact level of small. The final rule amends Table B–1 by adding the phrase ''as required by permits and Federal and State regulations'' to the end of the finding column entry.

(62) *Chronic Effects of Electromagnetic Fields (EMFs):* The final rule amends Table B–1 by renaming the ''Electromagnetic fields, chronic effects'' issue as ''Chronic effects of electromagnetic fields (EMFs).'' It remains an uncategorized issue with an impact level of uncertain because there is no national scientific consensus on the potential impacts from chronic exposure to EMFs. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Biological and physical studies of 60-Hz electromagnetic fields have not found consistent evidence linking harmful effects with field exposures. However, research is continuing in this area and a consensus scientific view has not been reached.

with the following:

> Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. EMFs are unlike other agents that have a toxic effect (e.g., toxic chemicals and ionizing radiation) in that dramatic acute effects cannot be forced and longer-term effects, if real, are subtle. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.

Although there is no conclusion as to the impact level, and this issue is not considered to be a Category 1 issue in the sense that a generic conclusion on the impact level has not been reached, this issue will be treated uniformly in plant-specific SEISs by essentially providing the discussion appearing in this issue's finding column entry in Table B–1 until a national scientific consensus has been reached.

The final rule further amends Table B–1 by appending a footnote to the issue column entry for ''Chronic Effects of Electromagnetic Fields (EMFs),'' concerning the extent to which transmission lines and their associated right of ways have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment. In addition, the final rule retains the footnote that was appended to issue column entry but renumbers that footnote from ''5'' to ''6'' and retains the footnote that was appended to category column entry but renumbers that footnote from ''4'' to ''5.''

(63) *Physical Occupational Hazards:* The final rule amends Table B–1 by adding a new Category 1 issue, ''Physical occupational hazards,'' to evaluate the potential impact of physical occupational hazards on human health resulting from normal nuclear power plant operations during the license renewal term. The issue has an impact level of small. The finding column entry for this issue states,

> Occupational safety and health hazards are generic to all types of electrical generating stations, including nuclear power plants, and are of small significance if the workers adhere to safety standards and use protective equipment as required by Federal and State regulations.

Through a Memorandum of Understanding (53 FR 43950; October 31, 1988) between the NRC and the Occupational Safety and Health Administration (OSHA), plant conditions that result in an occupational risk, but do not affect the safety of licensed radioactive materials, are under the statutory authority of OSHA rather than the NRC. Nevertheless, the impact of physical occupational hazards on human health has been raised by the public, as well as Federal and State agencies during the license renewal process. As such, this issue has been added to allow for a more complete analysis of the human health impact of continued power plant operation during the license renewal term. Occupational hazards can be minimized by licensees when workers adhere to safety standards and use appropriate protective equipment, although fatalities and injuries from accidents can still occur. Data for occupational injuries in 2005 obtained from the U.S. Bureau of Labor Statistics indicate that the rate of fatal injuries in the utility sector is less than the rate for many sectors (e.g., construction, transportation and warehousing, agriculture, forestry, fishing and hunting, wholesale trade, and mining) and that the incidence rate for nonfatal occupational injuries and illnesses is the least for electric power generation, followed by electric power transmission control and distribution. It is expected that over the license renewal term, licensees would ensure that their workers continue to adhere to safety standards and use protective equipment, so adverse occupational impacts would be of small significance at all sites.

(64) *Electric Shock Hazards:* The final rule amends Table B–1 by renaming the ''Electromagnetic fields, acute effects (electric shock)'' issue as ''Electric shock hazards.'' It remains a Category 2 issue with an impact level range of small to large. The final rule further amends Table B–1 by replacing the finding column entry, which states,

> Electrical shock resulting from direct access to energized conductors or from induced charges in metallic structures have not been found to be a problem at most operating plants and generally are not expected to be a problem during the license

renewal term. However, site-specific review is required to determine the significance of the electric shock potential at the site. See § 51.53(c)(3)(ii)(H).

with the following:

Electrical shock potential is of small significance for transmission lines that are operated in adherence with the National Electrical Safety Code (NESC). Without a review of conformance with NESC criteria of each nuclear power plant's in-scope transmission lines, it is not possible to generically determine the significance of the electrical shock potential.

The final rule's change to the finding column entry reflects the analysis in the revised GEIS concerning the potential of electrical shock from transmission lines. The final rule further amends Table B–1 by appending a footnote to the issue column entry for ''Electric shock hazards,'' concerning the extent to which transmission lines and their associated right of ways have been analyzed under the revised GEIS. This footnote is the same one that was added to Issue 3, ''Offsite land use in transmission line right-of-ways (ROWs).'' See the description of the changes made by the final rule to Issue 3 for further explanation of this amendment.

Postulated Accidents

(65) *Design-Basis Accidents and (66) Severe Accidents:* ''Design-basis accidents,'' and ''Severe accidents,'' with impact levels of small, remain Category 1 and 2 issues, respectively. The final rule amends Table B–1 by making minor clarifying changes to the finding column entries for both of these issues.

Environmental Justice

(67) *Minority and Low-Income Populations:* The final rule amends Table B–1 by adding a new Category 2 issue, ''Minority and low-income populations,'' to evaluate the impacts of continued operations and any refurbishment activities during the license renewal term on minority and low-income populations living in the vicinity of the plant. This issue was listed in Table B–1, prior to this final rule, but was not evaluated in the 1996 GEIS. In that table the finding column entry for this issue states, ''[t]he need for and the content of an analysis of environmental justice will be addressed in plant-specific reviews.''

Executive Order 12898 (59 FR 7629; February 16, 1994) initiated the Federal government's environmental justice program. The NRC's ''Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions'' (69 FR 52040; August 24, 2004) states, ''the NRC is committed to the general goals of E.O. 12898, [and] it will strive to meet those goals through its normal and traditional NEPA review process.'' Guidance for implementing E.O. 12898 was not available prior to the completion of the 1996 GEIS. By making this a Category 2 issue, the final rule requires license renewal applicants to identify, in their environmental reports, minority and low-income populations and communities residing in the vicinity of the nuclear power plant.

The final rule amends Table B–1 by replacing the finding column entry, which states,

The need for and the content of an analysis of environmental justice will be addressed in plant-specific reviews.

with the following:

Impacts to minority and low-income populations and subsistence consumption resulting from continued operations and refurbishment associated with license renewal will be addressed in plant-specific reviews. See NRC Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (69 FR 52040; August 24, 2004).

The final rule does not adopt the proposed rule's impact range of small to moderate for this issue as E.O. 12898 requires a determination of whether human health and environmental effects of continued operations during the license renewal term and refurbishment associated with license renewal on minority and low-income populations would be disproportionately high and adverse. This determination will be made by the NRC in each plant-specific SEIS.

The final rule removes the footnote from the category column entry for this issue and removes footnote ''6'' from Table B–1 as footnote ''6'' is no longer necessary.

Waste Management

(68) *Low-Level Waste Storage and Disposal:* This issue remains a Category 1 issue with an impact level of small. The final rule amends Table B–1 by replacing the finding column entry, which states,

The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment will remain small during the term of a renewed license. The maximum additional on-site land that may be required for low-level waste storage during the term of a renewed license and associated impacts will be small. Nonradiological impacts on air and water will be negligible. The radiological and nonradiological environmental impacts of long-term disposal of low-level waste from any individual plant at licensed sites are small. In addition, the Commission concludes that there is reasonable assurance that sufficient low-level waste disposal capacity will be made available when needed for facilities to be decommissioned consistent with NRC decommissioning requirements.

with the following:

The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment would remain small during the license renewal term.

(69) *Onsite Storage of Spent Nuclear Fuel:* The final rule amends Table B–1 by renaming the ''Onsite spent fuel'' issue as ''Onsite storage of spent nuclear fuel.'' It remains a Category 1 issue with an impact level of small. As described in Section V, ''Related Issues of Importance,'' of this document, the final rule revises the finding column entry for this issue to reflect the D.C. Circuit's decision in *New York* v. *NRC* and the NRC's planned response thereto. Specifically, the final rule reduces the period of time covered by this issue from the period of extended license (from approval of the license renewal application to the expiration of the operating license) plus 30 years after the permanent shutdown of the reactor and expiration of the operating license to the period of extended license only. The final rule amends Table B–1 by replacing the finding column entry, which states,

The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated on site with small environmental effects through dry or pool storage at all plants if a permanent repository or monitored retrievable storage is not available.

with the following:

The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite during the license renewal term with small environmental effects through dry or pool storage at all plants.

(70) *Offsite Radiological Impacts of Spent Nuclear Fuel and High-Level Waste Disposal:* The final rule amends Table B–1 by renaming the ''Offsite radiological impacts (spent fuel and high level waste disposal)'' issue as ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.'' As described in Section V ''Related Issues of Importance,'' of this document, the final rule revises the finding column entry for this issue to reflect the D.C. Circuit's decision in *New York* v. *NRC* and the NRC's planned response thereto. Specifically, the final rule reclassifies this issue from Category

1, with no impact level assigned, to an uncategorized issue with an impact level of uncertain. The final rule removes the description in the finding column entry and replaces it with the following: ''Uncertain impact. The generic conclusion on offsite radiological impacts of spent nuclear fuel and high-level waste is not being finalized pending the completion of a generic environmental impact statement on waste confidence.'' Upon issuance of the generic EIS and revised Waste Confidence Rule, the NRC will make any necessary confirming amendments to this rule.

(71) *Mixed-Waste Storage and Disposal:* This issue remains a Category 1 issue with an impact level of small. The final rule amends Table B–1 by replacing the finding column entry for this issue, which states,

The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal will not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small. In addition, the Commission concludes that there is reasonable assurance that sufficient mixed waste disposal capacity will be made available when needed for facilities to be decommissioned consistent with NRC decommissioning requirements.

with the following:

The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal would not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small.

(72) *Nonradioactive Waste Storage and Disposal:* The final rule amends Table B–1 by renaming the issue ''Nonradiological waste'' as ''Nonradiological waste storage and disposal.'' It remains a Category 1 issue, with an impact level of small. The final rule further amends Table B–1 by replacing the finding column entry, which states,

No changes to generating systems are anticipated for license renewal. Facilities and procedures are in place to ensure continued proper handling and disposal at all sites.

with the following:

No changes to systems that generate nonradioactive waste are anticipated during the license renewal term. Facilities and procedures are in place to ensure continued proper handling, storage, and disposal, as well as negligible exposure to toxic materials for the public and the environment at all plants.

Cumulative Impacts

(73) *Cumulative Impacts:* The final rule amends Table B–1 by adding a new Category 2 issue, ''Cumulative impacts,'' to evaluate the potential cumulative impacts of license renewal. The term ''cumulative impacts'' is defined in 10 CFR 51.14(b) by reference to the CEQ regulations, 40 CFR 1508.7, as ''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.''

For the purposes of analysis, past actions are considered to be when the nuclear power plant was licensed and constructed, present actions are related to current plant operations, and future actions are those that are reasonably foreseeable through the end of plant operations including the license renewal term. The geographic area over which past, present, and future actions are assessed depends on the affected resource.

The final rule requires license renewal applicants to identify other past, present, and reasonably foreseeable future actions, such as the construction and operation of other power plants and other industrial and commercial facilities in the vicinity of the nuclear power plant. The finding column entry for this issue states,

Cumulative impacts of continued operations and refurbishment associated with license renewal must be considered on a plant-specific basis. Impacts would depend on regional resource characteristics, the resource-specific impacts of license renewal, and the cumulative significance of other factors affecting the resource.

Uranium Fuel Cycle

(74) *Offsite Radiological Impacts—Individual Impacts from Other than the Disposal of Spent Fuel and High-Level Waste:* The final rule amends Table B–1 by renaming the ''Offsite radiological impacts (individual effects from other than the disposal of spent fuel and high level waste)'' issue as ''Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste.'' This issue remains a Category 1 issue with an impact level of small. The final rule further amends Table B–1 by replacing the finding column entry, which states,

Off-site impacts of the uranium fuel cycle have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts on individuals from radioactive gaseous and liquid releases including radon-222 and technetium-99 are small.

with the following:

The impacts to the public from radiological exposures have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts to individuals from radioactive gaseous and liquid releases, including radon-222 and technetium-99, would remain at or below the NRC's regulatory limits.

(75) *Offsite Radiological Impacts—Collective Impacts from Other than the Disposal of Spent Fuel and High-Level Waste:* The final rule amends Table B–1 by renaming the ''Offsite radiological impacts (collective effects)'' issue as ''Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste.'' It remains a Category 1 issue with no impact level assigned. The final rule further amends Table B–1 by replacing the finding column entry, which states,

The 100 year environmental dose commitment to the U.S. population from the fuel cycle, high level waste and spent fuel disposal excepted, is calculated to be about 14,800 person rem, or 12 cancer fatalities, for each additional 20-year power reactor operating term. Much of this, especially the contribution of radon releases from mines and tailing piles, consists of tiny doses summed over large populations. This same dose calculation can theoretically be extended to include many tiny doses over additional thousands of years as well as doses outside the U.S. The result of such a calculation would be thousands of cancer fatalities from the fuel cycle, but this result assumes that even tiny doses have some statistical adverse health effect which will not ever be mitigated (for example no cancer cure in the next thousand years), and that these doses projected over thousands of years are meaningful. However, these assumptions are questionable. In particular, science cannot rule out the possibility that there will be no cancer fatalities from these tiny doses. For perspective, the doses are very small fractions of regulatory limits, and even smaller fractions of natural background exposure to the same populations.

Nevertheless, despite all the uncertainty, some judgment as to the regulatory NEPA implications of these matters should be made and it makes no sense to repeat the same judgment in every case. Even taking the uncertainties into account, the Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective effects of the

fuel cycle, this issue is considered Category 1.

with the following:

There are no regulatory limits applicable to collective doses to the general public from fuel-cycle facilities. The practice of estimating health effects on the basis of collective doses may not be meaningful. All fuel-cycle facilities are designed and operated to meet the applicable regulatory limits and standards. The Commission concludes that the collective impacts are acceptable.

The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective impacts of the uranium fuel cycle, this issue is considered Category 1.

(76) *Nonradiological Impacts of the Uranium Fuel Cycle:* The final rule amends Table B–1 by making minor clarifying changes to the finding column entry for this issue. This issue remains a Category 1 issue with an impact level of small.

(77) *Transportation:* This issue remains a Category 1 issue with an impact level of small. The final rule amends Table B–1 by replacing the finding column entry for this issue, which states,

The impacts of transporting spent fuel enriched up to 5 percent uranium-235 with average burnup for the peak rod to current levels approved by NRC up to 62,000 MWd/MTU and the cumulative impacts of transporting high-level waste to a single repository, such as Yucca Mountain, Nevada are found to be consistent with the impact values contained in 10 CFR 51.52(c), Summary Table S–4—Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor. If fuel enrichment or burnup conditions are not met, the applicant must submit an assessment of the implications for the environmental impact values reported in § 51.52.

with the following:

The impacts of transporting materials to and from uranium-fuel-cycle facilities on workers, the public, and the environment are expected to be small.

Termination of Nuclear Power Plant Operations and Decommissioning

(78) *Termination of Plant Operations and Decommissioning:* The final rule amends Table B–1 by consolidating a new Category 1 issue, ''Termination of nuclear power plant operations'' with six other Category 1 issues related to the decommissioning of a nuclear power plant: ''Radiation doses,'' ''Waste management,'' ''Air quality,'' ''Water quality,'' ''Ecological resources,'' and ''Socioeconomic impacts,'' each with an impact level of small. The final rule names the consolidated issue, ''Termination of plant operations and decommissioning.'' The consolidated issue is a Category 1 issue with an impact level of small.

The final rule further amends Table B–1 by removing the entries for ''Radiation doses,'' ''Waste management,'' ''Air quality,'' ''Water quality,'' ''Ecological resources,'' and ''Socioeconomic impacts,'' and, by adding an entry for ''Termination of plant operations and decommissioning.'' The finding column entry for the consolidated issue states,

License renewal is expected to have a negligible effect on the impacts of terminating operations and decommissioning on all resources.

The 1996 GEIS analysis indicates that the six decommissioning issues are expected to be small at all nuclear power plant sites. The new issue addresses the impacts from terminating nuclear power plant operations and plant decommissioning. Termination of nuclear power plant operations results in the cessation of many routine plant operations as well as a significant reduction in the plant's workforce. It is assumed that termination of plant operations would not lead to the immediate decommissioning and dismantlement of the reactor or other power plant infrastructure.

The final rule consolidates the six decommissioning issues and the termination of nuclear power plant operations issue into one Category 1 issue to facilitate the environmental review process. For further information about the environmental effects of decommissioning, see the ''2002 Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors,'' NUREG–0586.

IX. Section-by-Section Analysis

The following section-by-section analysis discusses the sections in 10 CFR part 51 that are being amended as a result of the final rule.

Section 51.53(c)(2)

The NRC is clarifying the required contents of the license renewal environmental report, which applicants must submit in accordance with 10 CFR 54.23, ''Contents of application—environmental information,'' by revising the second sentence in this subparagraph to read, ''This report must describe in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents, and any planned refurbishment activities.''

Sections 51.53(c)(3)(ii)(A), (B), (C), and (E)

For those applicants seeking an initial license renewal and holding either an operating license, construction permit, or combined license as of June 30, 1995, the environmental report shall include the information required in 10 CFR 51.53(c)(2) but is not required to contain assessments of the environmental impacts of certain license renewal issues identified as Category 1 (generically analyzed) issues in Appendix B to Subpart A of 10 CFR part 51. The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 (plant-specific analysis required) issues in Appendix B to Subpart A of 10 CFR part 51 and must include consideration of alternatives for reducing adverse impacts of Category 2 issues. In addition, the environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware. The required analyses are listed in 10 CFR 51.53(c)(3)(ii)(A)–(P).

The final rule language for 10 CFR 51.53(c)(3)(ii)(A), (B), (C), (E), (F), (G), (I), (J), (K), and (N) consists of changes to conform to the final changes in Table B–1, which in turn, reflects the revised GEIS. The modified paragraphs more accurately reflect the specific information needed in the environmental report that will help the NRC conduct the environmental review of the proposed action.

Section 51.53(c)(3)(ii)(A) is revised to incorporate the findings of the revised GEIS and to require applicants to provide information in their environmental reports regarding water use conflicts encompassing water availability and competing water demands, and related impacts on stream (aquatic) and riparian (terrestrial) communities. The numerical definition for a low flow river has also been deleted requiring that applicants withdrawing makeup water for cooling towers or cooling ponds from any river provide a plant-specific assessment of water use conflicts in their environmental reports.

Section 51.53(c)(3)(ii)(B) is revised to replace ''heat shock'' with ''thermal changes'' to reflect the final changes in

Table B–1 as described earlier in this document under ''Aquatic Resources'' environmental impact Issue 39, ''Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds).''

Section 51.53(c)(3)(ii)(C) is revised to delete the reference to ''Ranney wells'' to conform to the final changes made in the revised Table B–1.

Section 51.53(c)(3)(ii)(E) is revised to expressly include nuclear power plant continued operations within the scope of the impacts to be assessed by license renewal applicants. The paragraph is further revised to expand the scope of the provision to include all Federal wildlife protection laws and essential fish habitat under the MSA.

Section 51.53(c)(3)(ii)(F)

The final rule removes and reserves 10 CFR 51.53(c)(3)(ii)(F) because the final rule changes the Category 2 issue, ''Air quality during refurbishment (nonattainment and maintenance areas),'' to Category 1, ''Air quality impacts (all plants).''

Section 51.53(c)(3)(ii)(G)

The final rule language for 10 CFR 51.53(c)(3)(ii)(G) is revised to delete the numerical definition for a low flow river to conform to the final changes made in the revised Table B–1.

Section 51.53(c)(3)(ii)(I)

The final rule removes and reserves 10 CFR 51.53(c)(3)(ii)(I) because several Category 2 socioeconomic issues are reclassified as Category 1.

Section 51.53(c)(3)(ii)(J)

The final rule removes and reserves 10 CFR 51.53(c)(3)(ii)(J) because the final rule changes the Category 2 issue, ''Public services, Transportation,'' to Category 1, ''Transportation.''

Section 51.53(c)(3)(ii)(K)

The final rule language for 10 CFR 51.53(c)(3)(ii)(K) is revised to more accurately reflect the specific information needed in the environmental report that will help the NRC conduct the environmental review of the proposed action.

Section 51.53(c)(3)(ii)(N)

The final rule adds a new paragraph 10 CFR 51.53 (c)(3)(ii)(N) to require license renewal applicants to provide information on the general demographic composition of minority and low-income populations and communities (by race and ethnicity) residing in the immediate vicinity of the plant that could be affected by the renewal of the plant's operating license, including any planned refurbishment activities, and ongoing and future plant operations.

Section 51.53(c)(3)(ii)(O)

The final rule adds a new paragraph 10 CFR 51.53 (c)(3)(ii)(O) to require license renewal applicants to provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear power plant that may result in a cumulative effect.

Section 51.53(c)(3)(ii)(P)

The final rule adds a new paragraph 10 CFR 51.53 (c)(3)(ii)(P) to require the license renewal applicant to assess the impact of any documented inadvertent releases of radionuclides to groundwater. The assessment must include a description of any groundwater protection program used for the surveillance of piping and components containing radioactive liquids for which a pathway to groundwater may exist. The assessment must also include a description of any past inadvertent releases, including the projected impact to the environment (e.g., aquifers, rivers, lakes, ponds) during the license renewal term.

Section 51.71(d)

The final rule language for 10 CFR 51.71(d) is revised to make minor conforming changes to clarify the readability and to include the analysis of cumulative impacts. Cumulative impacts were not addressed in the 1996 GEIS, but are currently being evaluated by the NRC in plant-specific supplements to the GEIS. The NRC is modifying this paragraph to more accurately reflect the cumulative impacts analysis conducted for environmental reviews of the proposed action.

Section 51.95(c)

The final rule language revisions to the introductory text of 10 CFR 51.95(c) are administrative in nature and replace the reference to the 1996 GEIS for license renewal of nuclear power plants with a reference to the revised GEIS.

Section 51.95(c)(4)

The final rule removes the terms ''resolved Category 2 issues'' and ''open Category 2 issues'' from the second sentence of 10 CFR 51.95(c)(4), makes other clarifying changes to enhance the readability of the sentence, corrects a typographical error, and removes otherwise ambiguous or unnecessary language. The terms ''resolved Category 2 issues'' and ''open Category 2 issues'' are not defined nor used in 10 CFR part 51. In addition, the revised GEIS does not contain these terms nor does the NRC use these terms in SEISs. The only instance in past NRC practice in which an ''open'' or ''resolved'' Category 2 issue arises is for the Category 2 ''Severe accidents'' issue. The ''Severe accidents'' issue requires the preparation of a severe accident mitigation alternatives (SAMA) analysis as a prerequisite to license renewal. If a license renewal applicant had not yet performed a SAMA analysis for a given plant, then the issue would remain ''open'' pending the completion of a SAMA analysis. Some licensees, however, have already performed a SAMA analysis at some point. Thus, if a license renewal applicant had performed a SAMA analysis for a particular plant, then the issue would be considered ''resolved,'' and there would be no need to repeat a SAMA analysis as part of a license renewal application. As the finding column entry for ''Severe accidents'' already provides for a previously prepared SAMA analysis, and the ''open'' or ''resolved'' terminology is not used in connection with any other GEIS issue, there is no need to retain this language in the second sentence of 10 CFR 51.95(c)(4).

Table B–1

The final rule revises Table B–1 to follow the organizational format of the revised GEIS. Environmental issues in Table B–1 are arranged by resource area. The environmental impacts of license renewal activities, including plant operations and refurbishment along with replacement power alternatives, are addressed in each resource area. Table B–1 organizes environmental impact issues under the following resource areas: (1) Land use; (2) visual resources; (3) air quality; (4) noise; (5) geologic environment; (6) surface water resources; (7) groundwater resources; (8) terrestrial resources; (9) aquatic resources; (10) special status species and habitats; (11) historic and cultural resources; (12) socioeconomics; (13) human health; (14) postulated accidents; (15) environmental justice; (16) waste management; (17) cumulative impacts; (18) uranium fuel cycle; and (19) termination of nuclear power plant operations and decommissioning. Discussions of the environmental impact issues in each resource area and classification of issues into Category 1 or Category 2 are provided in Section VIII, ''Final Actions and Basis for Changes to Table B–1'' of this document. Additional changes to Table B–1 in the final rule were discussed previously in applicable resource areas in Section VIII. Footnote 1 was updated to reference the revised GEIS. A minor

edit was made to footnote 2, clause (3), to improve clarity. Footnote 4 was added to define the in-scope electric transmission lines. Consequently, the previous footnotes 4 and 5 were renumbered as footnotes 5 and 6, respectively. The previous footnote 6 was deleted, as it is no longer needed.

X. Guidance Documents

In the Rules and Regulations section of this issue of the **Federal Register**, the NRC is providing notice of the availability of three additional documents related to this final rule: (1) A revised GEIS, NUREG–1437, ''Generic Environmental Impact statement for License Renewal of Nuclear Plants,'' Vol. 1, ''Main Report'' (ADAMS Accession No. ML13106A241); Vol. 2, ''Public Comments'' (ADAMS Accession No. ML13106A242); and Vol. 3, ''Appendices'' (ADAMS Acession No. ML13106A244); (2) Revision 1 of Environmental Standard Review Plan (ESRP), NUREG–1555, Supplement 1, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal'' (ADAMS Acession No. ML13106A246); and (3) Revision 1 of Regulatory Guide 4.2, Supplement 1, ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications'' (ADAMS Acession No. ML13067A354).

The revised GEIS is intended to improve the efficiency of the license renewal process by (1) Providing an evaluation of the types of environmental impacts that may occur from renewing commercial nuclear power plant operating licenses, (2) identifying and assessing impacts that are expected to be generic (the same or similar) at all nuclear power plants (or plants with specific plant or site characteristics), and (3) defining the number and scope of environmental impact issues that need to be addressed in plant-specific supplemental EISs. The content of the revised GEIS is discussed further in Section III, ''Discussion,'' of this document.

Revision 1 of RG 4.2, Supplement 1, provides general procedures for the preparation of environmental reports, which are submitted as part of the license renewal application for a nuclear power plant in accordance with 10 CFR part 54. More specifically, this revised RG explains the criteria for addressing Category 2 issues in the environmental report as required by the revisions to 10 CFR part 51 under the final rule.

The revised ESRP provides guidance to the NRC staff on how to conduct a license renewal environmental review. The ESRP parallels the format in RG 4.2. The primary purpose of the ESRP is to ensure that these reviews focus on those environmental concerns associated with license renewal as described in 10 CFR part 51.

XI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517), this rule is classified as compatibility category ''NRC.'' Agreement State Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category ''NRC'' regulations do not confer regulatory authority on the State.

XII. Availability of Documents

The NRC is making the documents identified in the following table available to interested persons through one or more of the methods provided in the **ADDRESSES** section of this document.

Document	PDR	Web	ADAMS Accession No.
NUREG–1437, Revision 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Vol. 1, ''Main Report''.	X	X	ML13106A241
NUREG–1437, Revision 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Vol. 2, ''Public Comments''.	X	X	ML13106A242
NUREG–1437, Revision 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Vol. 3, ''Appendices''.	X	X	ML13106A244
Regulatory Guide 4.2, Supplement 1, Revision 1, ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications''.	X	X	ML13067A354
NUREG–1555, Supplement 1, Revision 1, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal''.	X	X	ML13106A246
Regulatory Analysis for RIN 3150–AI42, Final Rulemaking Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses.	X	X	ML13029A471
OMB Supporting Statement for RIN 3150–AI42, Final Rulemaking Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses.	X	X	ML110760342
SECY–12–0063, Final Rule: Revisions to Environmental Protection Regulations for the Renewal of Nuclear Power Plant Operating Licenses (10 CFR part 50; RIN 3150–AI42) (April 20, 2012).	X	X	ML110760033
Staff Requirements Memorandum for SECY–12–0063 (December 6, 2012)	X	X	ML12341A134
Meeting Between the U.S. Nuclear Regulatory Commission and Public Stakeholders Concerning Implementation of Final Rule for Revisions to the Environmental Protection Regulations for the Renewal of Nuclear Power Plant Operating Licenses and Other License Renewal Environmental Review Issues (TAC No. ME2308) (July 21, 2011).	X	X	ML11182B535
Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (July 12, 2011).	X	X	ML111861807
NRC Press Release No. 10–060, ''NRC Asks National Academy of Sciences to Study Cancer Risk in Populations Living Near Nuclear Power Facilities'' (April 7, 2010).	X	X	ML100970142
Summary of Public Meetings to Discuss Proposed Rule Regarding Title 10, part 51 of the *Code of Federal Regulations* and the Draft Revision to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437, Revision 1 (November 3, 2009).	X	X	ML093070141

Document	PDR	Web	ADAMS Accession No.
Official Transcript of Public Meeting to Discuss the Draft Generic Environmental Impact Statement, Dana Point, CA (October 22, 2009).	X	X	ML093100505
Official Transcript of Public Meeting to Discuss the Draft Generic Environmental Impact Statement, Pismo Beach, CA (October 20, 2009).	X	X	ML093070174
Official Transcript of Public Meeting to Discuss the Draft Generic Environmental Impact Statement, Rockville, MD (October 1, 2009).	X	X	ML092931678
Official Transcript of Public Meeting to Discuss the Draft Generic Environmental Impact Statement, Oak Brook, IL (September 24, 2009).	X	X	ML092931545
Official Transcript of Public Meeting to Discuss the Draft Generic Environmental Impact Statement, Newton, MA (September 17, 2009).	X	X	ML092931681
Official Transcript of Public Meeting to Discuss the Draft Generic Environmental Impact Statement, Atlanta, GA (September 15, 2009).	X	X	ML092810007
NRC Response to Public Comments Received on Proposed 10 CFR part 51 Rule, ''Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses'' (RIN 3150–AI42).	X	X	ML111450013
NRC Response to Public Comments Related to Draft Regulatory Guide, DG–4015 (Proposed Revision 1 of Regulatory Guide 4.2, Supplement 1)—''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications'' (RIN 3150–AI42).	X	X	ML13067A355
Regulatory History for Proposed Rule, ''Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses'' (RIN 3150–AI42).	X	X	ML093160539
Draft NUREG–1437, Vols. 1 and 2, Revision 1—''Generic Environmental Impact Statement for License Renewal of Nuclear Plants''.	X	X	ML090220654
Draft Regulatory Guide, DG–4015 (Proposed Revision 1 of RG 4.2, Supplement 1), ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications''.	X	X	ML091620409
Draft NUREG–1555, Supplement 1, Revision 1—''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal''.	X	X	ML090230497
NEI 07–07, ''Industry Ground Water Protection Initiative—Final Guidance Document''	X	X	ML072610036
Liquid Radioactive Release Lessons Learned Task Force Final Report (September 1, 2006).	X	X	ML062650312
NUREG–1437, Vol. 1, Addendum 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Main Report, Section 6.3—Transportation, Table 9.1, Summary of NEPA Issues for License Renewal of Nuclear Power Plants.	X	X	ML040690720
NUREG–1437, Vol. 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Main Report.	X	X	ML040690705
NUREG–1437, Vol. 2, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Appendices.	X	X	ML040690738

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. This final rulemaking, which amends various provisions of 10 CFR part 51, does not constitute the establishment of a standard that contains generally applicable requirements.

XIV. Environmental Impact—Categorical Exclusion

The NRC has determined that the promulgation of this final rule is a type of procedural action that meets the criteria of the categorical exclusion set forth in 10 CFR 51.22(c)(3)(i) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

XV. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), control number 3150–0021.

The burden to the public for these information collections is estimated to be reduced by an average of 311.15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *INFO COLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0021), Office of Management and Budget, Washington, DC 20503, or by email to *Chad_S._Whiteman@omb.eop.gov.*

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XVI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

XVII. Regulatory Analysis

The NRC has prepared a regulatory analysis of this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. Availability of the regulatory analysis is provided in Section XII, ''Availability of Documents,'' of this document.

XVIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule affects only nuclear power plant licensees filing license renewal applications. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIX. Backfitting and Issue Finality

Issuance of this final rule does not constitute ''backfitting'' as defined in 10 CFR 50.109(a)(1) of the Backfit Rule and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52. The final rule does not meet the definition of a backfit in 10 CFR 50.109(a)(1) because the document is not a ''modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility.'' For these reasons, issuance of this final rule does not constitute ''backfitting'' within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Similarly, the issuance of the this final rule does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52.

XX. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the OMB.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC amends 10 CFR part 51 as follows:

Part 51—Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub. L. 95 604, Title II, 92 Stat. 3033 3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 2. Amend § 51.53 by:
■ a. Revising the second sentence of paragraph (c)(2);
■ b. Revising the first sentence of paragraph (c)(3)(ii)(A);
■ c. Revising the second sentence of paragraph (c)(3)(ii)(B);
■ d. Revising paragraph (c)(3)(ii)(C);
■ e. Revising paragraph (c)(3)(ii)(E);
■ f. Removing and reserving paragraph (c)(3)(ii)(F);
■ g. Revising paragraph (c)(3)(ii)(G);
■ h. Removing and reserving paragraphs (c)(3)(ii)(I) and (J);
■ i. Revising paragraph (c)(3)(ii)(K); and
■ j. Adding paragraphs (c)(3)(ii)(N), (O), and (P).

The revisions and additions read as follows:

§ 51.53 Postconstruction environmental reports.

* * * * *

(c) * * *

(2) * * * This report must describe in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents, and any planned refurbishment activities. * * *

(3) * * *

(ii) * * *

(A) If the applicant's plant utilizes cooling towers or cooling ponds and withdraws makeup water from a river, an assessment of the impact of the proposed action on water availability and competing water demands, the flow of the river, and related impacts on stream (aquatic) and riparian (terrestrial) ecological communities must be provided. * * *

(B) * * * If the applicant cannot provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from thermal changes and impingement and entrainment.

(C) If the applicant's plant pumps more than 100 gallons (total onsite) of groundwater per minute, an assessment of the impact of the proposed action on groundwater must be provided.

* * * * *

(E) All license renewal applicants shall assess the impact of refurbishment, continued operations, and other license-renewal-related construction activities on important plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on threatened or endangered species in accordance with Federal laws protecting wildlife, including but not limited to, the Endangered Species Act, and essential fish habitat in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

* * * * *

(G) If the applicant's plant uses a cooling pond, lake, or canal or discharges into a river, an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

* * * * *

(K) All applicants shall identify any potentially affected historic or archaeological properties and assess whether any of these properties will be affected by future plant operations and any planned refurbishment activities in accordance with the National Historic Preservation Act.

* * * * *

(N) Applicants shall provide information on the general demographic composition of minority and low-income populations and communities (by race and ethnicity) residing in the immediate vicinity of the plant that could be affected by the renewal of the plant's operating license, including any planned refurbishment activities, and ongoing and future plant operations.

(O) Applicants shall provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect.

(P) An applicant shall assess the impact of any documented inadvertent releases of radionuclides into groundwater. The applicant shall include in its assessment a description of any groundwater protection program

used for the surveillance of piping and components containing radioactive liquids for which a pathway to groundwater may exist. The assessment must also include a description of any past inadvertent releases and the projected impact to the environment (e.g., aquifers, rivers, lakes, ponds, ocean) during the license renewal term.

■ 3. In § 51.71, revise paragraph (d) to read as follows:

§ 51.71 Draft environmental impact statement—contents.

* * * * *

(d) *Analysis.* Unless excepted in this paragraph or § 51.75, the draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects, including any cumulative effects, of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects. Additionally, the draft environmental impact statement will include a consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives. The draft environmental impact statement will indicate what other interests and considerations of Federal policy, including factors not related to environmental quality, if applicable, are relevant to the consideration of environmental effects of the proposed action identified under paragraph (a) of this section. The draft supplemental environmental impact statement prepared at the license renewal stage under § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action. The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms. Consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements issued or imposed under the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by environmental quality standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained. While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

* * * * *

Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage. When no such assessment of aquatic impacts is available from the permitting authority, NRC will establish on its own, or in conjunction with the permitting authority and other agencies having relevant expertise, the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage.

* * * * *

■ 4. Amend § 51.95 by revising paragraph (c) introductory text and the second sentence of paragraph (c)(4) to read as follows:

§ 51.95 Postconstruction environmental impact statements.

* * * * *

(c) *Operating license renewal stage.* In connection with the renewal of an operating license or combined license for a nuclear power plant under 10 CFR parts 52 or 54 of this chapter, the Commission shall prepare an environmental impact statement, which is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (June 2013), which is available in the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852.

* * * * *

(4) * * * In order to make recommendations and reach a final decision on the proposed action, the NRC staff, adjudicatory officers, and Commission shall integrate the conclusions in the generic environmental impact statement for issues designated as Category 1 with information developed for those Category 2 issues applicable to the plant under § 51.53(c)(3)(ii) and any new and significant information. * * *

* * * * *

■ 5. In appendix B to subpart A of part 51, Table B–1 is revised to read as follows:

Appendix B to Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

* * * * *

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]

Issue	Category [2]	Finding [3]
Land Use		
Onsite land use	1	SMALL. Changes in onsite land use from continued operations and refurbishment associated with license renewal would be a small fraction of the nuclear power plant site and would involve only land that is controlled by the licensee.
Offsite land use	1	SMALL. Offsite land use would not be affected by continued operations and refurbishment associated with license renewal.
Offsite land use in transmission line right-of-ways (ROWs) [4].	1	SMALL. Use of transmission line ROWs from continued operations and refurbishment associated with license renewal would continue with no change in land use restrictions.
Visual Resources		
Aesthetic impacts	1	SMALL. No important changes to the visual appearance of plant structures or transmission lines are expected from continued operations and refurbishment associated with license renewal.
Air Quality		
Air quality impacts (all plants)	1	SMALL. Air quality impacts from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Emissions resulting from refurbishment activities at locations in or near air quality nonattainment or maintenance areas would be short-lived and would cease after these refurbishment activities are completed. Operating experience has shown that the scale of refurbishment activities has not resulted in exceedance of the *de minimis* thresholds for criteria pollutants, and best management practices including fugitive dust controls and the imposition of permit conditions in State and local air emissions permits would ensure conformance with applicable State or Tribal Implementation Plans. Emissions from emergency diesel generators and fire pumps and routine operations of boilers used for space heating would not be a concern, even for plants located in or adjacent to nonattainment areas. Impacts from cooling tower particulate emissions even under the worst-case situations have been small.
Air quality effects of transmission lines [4]	1	SMALL. Production of ozone and oxides of nitrogen is insignificant and does not contribute measurably to ambient levels of these gases.
Noise		
Noise impacts	1	SMALL. Noise levels would remain below regulatory guidelines for offsite receptors during continued operations and refurbishment associated with license renewal.
Geologic Environment		
Geology and soils	1	SMALL. The effect of geologic and soil conditions on plant operations and the impact of continued operations and refurbishment activities on geology and soils would be small for all nuclear power plants and would not change appreciably during the license renewal term.
Surface Water Resources		
Surface water use and quality (non-cooling system impacts).	1	SMALL. Impacts are expected to be small if best management practices are employed to control soil erosion and spills. Surface water use associated with continued operations and refurbishment associated with license renewal would not increase significantly or would be reduced if refurbishment occurs during a plant outage.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered salinity gradients	1	SMALL. Effects on salinity gradients would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered thermal stratification of lakes	1	SMALL. Effects on thermal stratification would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Scouring caused by discharged cooling water.	1	SMALL. Scouring effects would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Discharge of metals in cooling system effluent.	1	SMALL. Discharges of metals have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. Discharges are monitored and controlled as part of the National Pollutant Discharge Elimination System (NPDES) permit process.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Discharge of biocides, sanitary wastes, and minor chemical spills.	1	SMALL. The effects of these discharges are regulated by Federal and State environmental agencies. Discharges are monitored and controlled as part of the NPDES permit process. These impacts have been small at operating nuclear power plants.
Surface water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts could be of small or moderate significance, depending on makeup water requirements, water availability, and competing water demands.
Effects of dredging on surface water quality.	1	SMALL. Dredging to remove accumulated sediments in the vicinity of intake and discharge structures and to maintain barge shipping has not been found to be a problem for surface water quality. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem.
Groundwater Resources		
Groundwater contamination and use (non-cooling system impacts).	1	SMALL. Extensive dewatering is not anticipated from continued operations and refurbishment associated with license renewal. Industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals, and/or the use of wastewater ponds or lagoons have the potential to contaminate site groundwater, soil, and subsoil. Contamination is subject to State or Environmental Protection Agency regulated cleanup and monitoring programs. The application of best management practices for handling any materials produced or used during these activities would reduce impacts.
Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm]).	1	SMALL. Plants that withdraw less than 100 gpm are not expected to cause any groundwater use conflicts.
Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm]).	2	SMALL, MODERATE, or LARGE. Plants that withdraw more than 100 gpm could cause groundwater use conflicts with nearby groundwater users.
Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).	2	SMALL, MODERATE, or LARGE. Water use conflicts could result from water withdrawals from rivers during low-flow conditions, which may affect aquifer recharge. The significance of impacts would depend on makeup water requirements, water availability, and competing water demands.
Groundwater quality degradation resulting from water withdrawals.	1	SMALL. Groundwater withdrawals at operating nuclear power plants would not contribute significantly to groundwater quality degradation.
Groundwater quality degradation (plants with cooling ponds in salt marshes).	1	SMALL. Sites with closed-cycle cooling ponds could degrade groundwater quality. However, groundwater in salt marshes is naturally brackish and thus, not potable. Consequently, the human use of such groundwater is limited to industrial purposes.
Groundwater quality degradation (plants with cooling ponds at inland sites).	2	SMALL, MODERATE, or LARGE. Inland sites with closed-cycle cooling ponds could degrade groundwater quality. The significance of the impact would depend on cooling pond water quality, site hydrogeologic conditions (including the interaction of surface water and groundwater), and the location, depth, and pump rate of water wells.
Radionuclides released to groundwater	2	SMALL or MODERATE. Leaks of radioactive liquids from plant components and pipes have occurred at numerous plants. Groundwater protection programs have been established at all operating nuclear power plants to minimize the potential impact from any inadvertent releases. The magnitude of impacts would depend on site-specific characteristics.
Terrestrial Resources		
Effects on terrestrial resources (non-cooling system impacts).	2	SMALL, MODERATE, or LARGE. Impacts resulting from continued operations and refurbishment associated with license renewal may affect terrestrial communities. Application of best management practices would reduce the potential for impacts. The magnitude of impacts would depend on the nature of the activity, the status of the resources that could be affected, and the effectiveness of mitigation.
Exposure of terrestrial organisms to radionuclides.	1	SMALL. Doses to terrestrial organisms from continued operations and refurbishment associated with license renewal are expected to be well below exposure guidelines developed to protect these organisms.
Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).	1	SMALL. No adverse effects to terrestrial plants or animals have been reported as a result of increased water temperatures, fogging, humidity, or reduced habitat quality. Due to the low concentrations of contaminants in cooling system effluents, uptake and accumulation of contaminants in the tissues of wildlife exposed to the contaminated water or aquatic food sources are not expected to be significant issues.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Cooling tower impacts on vegetation (plants with cooling towers).	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have the potential to affect adjacent vegetation, but these impacts have been small at operating nuclear power plants and are not expected to change over the license renewal term.
Bird collisions with plant structures and transmission lines [4].	1	SMALL. Bird collisions with cooling towers and other plant structures and transmission lines occur at rates that are unlikely to affect local or migratory populations and the rates are not expected to change.
Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts on terrestrial resources in riparian communities affected by water use conflicts could be of moderate significance.
Transmission line right-of-way (ROW) management impacts on terrestrial resources [4].	1	SMALL. Continued ROW management during the license renewal term is expected to keep terrestrial communities in their current condition. Application of best management practices would reduce the potential for impacts.
Electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock) [4].	1	SMALL. No significant impacts of electromagnetic fields on terrestrial flora and fauna have been identified. Such effects are not expected to be a problem during the license renewal term.
Aquatic Resources		
Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. The impacts of impingement and entrainment are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems, depending on cooling system withdrawal rates and volumes and the aquatic resources at the site.
Impingement and entrainment of aquatic organisms (plants with cooling towers).	1	SMALL. Impingement and entrainment rates are lower at plants that use closed-cycle cooling with cooling towers because the rates and volumes of water withdrawal needed for makeup are minimized.
Entrainment of phytoplankton and zooplankton (all plants).	1	SMALL. Entrainment of phytoplankton and zooplankton has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. Most of the effects associated with thermal discharges are localized and are not expected to affect overall stability of populations or resources. The magnitude of impacts, however, would depend on site-specific thermal plume characteristics and the nature of aquatic resources in the area.
Thermal impacts on aquatic organisms (plants with cooling towers).	1	SMALL. Thermal effects associated with plants that use cooling towers are expected to be small because of the reduced amount of heated discharge.
Infrequently reported thermal impacts (all plants).	1	SMALL. Continued operations during the license renewal term are expected to have small thermal impacts with respect to the following: Cold shock has been satisfactorily mitigated at operating nuclear plants with once-through cooling systems, has not endangered fish populations or been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds, and is not expected to be a problem. Thermal plumes have not been found to be a problem at operating nuclear power plants and are not expected to be a problem. Thermal discharge may have localized effects but is not expected to affect the larger geographical distribution of aquatic organisms. Premature emergence has been found to be a localized effect at some operating nuclear power plants but has not been a problem and is not expected to be a problem. Stimulation of nuisance organisms has been satisfactorily mitigated at the single nuclear power plant with a once-through cooling system where previously it was a problem. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem.
Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication.	1	SMALL. Gas supersaturation was a concern at a small number of operating nuclear power plants with once-through cooling systems but has been mitigated. Low dissolved oxygen was a concern at one nuclear power plant with a once-through cooling system but has been mitigated. Eutrophication (nutrient loading) and resulting effects on chemical and biological oxygen demands have not been found to be a problem at operating nuclear power plants.
Effects of non-radiological contaminants on aquatic organisms.	1	SMALL. Best management practices and discharge limitations of NPDES permits are expected to minimize the potential for impacts to aquatic resources during continued operations and refurbishment associated with license renewal. Accumulation of metal contaminants has been a concern at a few nuclear power plants but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal.
Exposure of aquatic organisms to radionuclides.	1	SMALL. Doses to aquatic organisms are expected to be well below exposure guidelines developed to protect these aquatic organisms.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Effects of dredging on aquatic organisms ..	1	SMALL. Dredging at nuclear power plants is expected to occur infrequently, would be of relatively short duration, and would affect relatively small areas. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.
Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts on aquatic resources in stream communities affected by water use conflicts could be of moderate significance in some situations.
Effects on aquatic resources (non-cooling system impacts).	1	SMALL. Licensee application of appropriate mitigation measures is expected to result in no more than small changes to aquatic communities from their current condition.
Impacts of transmission line right-of-way (ROW) management on aquatic resources [4].	1	SMALL. Licensee application of best management practices to ROW maintenance is expected to result in no more than small impacts to aquatic resources.
Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses.	1	SMALL. These types of losses have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Special Status Species and Habitats		
Threatened, endangered, and protected species and essential fish habitat.	2	The magnitude of impacts on threatened, endangered, and protected species, critical habitat, and essential fish habitat would depend on the occurrence of listed species and habitats and the effects of power plant systems on them. Consultation with appropriate agencies would be needed to determine whether special status species or habitats are present and whether they would be adversely affected by continued operations and refurbishment associated with license renewal.
Historic and Cultural Resources		
Historic and cultural resources [4]	2	Continued operations and refurbishment associated with license renewal are expected to have no more than small impacts on historic and cultural resources located onsite and in the transmission line ROW because most impacts could be mitigated by avoiding those resources. The National Historic Preservation Act (NHPA) requires the Federal agency to consult with the State Historic Preservation Officer (SHPO) and appropriate Native American Tribes to determine the potential effects on historic properties and mitigation, if necessary.
Socioeconomics		
Employment and income, recreation and tourism.	1	SMALL. Although most nuclear plants have large numbers of employees with higher than average wages and salaries, employment, income, recreation, and tourism impacts from continued operations and refurbishment associated with license renewal are expected to be small.
Tax revenues	1	SMALL. Nuclear plants provide tax revenue to local jurisdictions in the form of property tax payments, payments in lieu of tax (PILOT), or tax payments on energy production. The amount of tax revenue paid during the license renewal term as a result of continued operations and refurbishment associated with license renewal is not expected to change.
Community services and education	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to local community and educational services would be small. With little or no change in employment at the licensee's plant, value of the power plant, payments on energy production, and PILOT payments expected during the license renewal term, community and educational services would not be affected by continued power plant operations.
Population and housing	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to regional population and housing availability and value would be small. With little or no change in employment at the licensee's plant expected during the license renewal term, population and housing availability and values would not be affected by continued power plant operations.
Transportation	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to traffic volumes would be small.
Human Health		
Radiation exposures to the public	1	SMALL. Radiation doses to the public from continued operations and refurbishment associated with license renewal are expected to continue at current levels, and would be well below regulatory limits.
Radiation exposures to plant workers	1	SMALL. Occupational doses from continued operations and refurbishment associated with license renewal are expected to be within the range of doses experienced during the current license term, and would continue to be well below regulatory limits.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Human health impact from chemicals	1	SMALL. Chemical hazards to plant workers resulting from continued operations and refurbishment associated with license renewal are expected to be minimized by the licensee implementing good industrial hygiene practices as required by permits and Federal and State regulations. Chemical releases to the environment and the potential for impacts to the public are expected to be minimized by adherence to discharge limitations of NPDES and other permits.
Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river).	2	SMALL, MODERATE, or LARGE. These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals, or that discharge into rivers. Impacts would depend on site-specific characteristics.
Microbiological hazards to plant workers	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures as required by permits and Federal and State regulations.
Chronic effects of electromagnetic fields (EMFs) [4,6].	N/A [5]	Uncertain impact. Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. EMFs are unlike other agents that have a toxic effect (e.g., toxic chemicals and ionizing radiation) in that dramatic acute effects cannot be forced and longer-term effects, if real, are subtle. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.
Physical occupational hazards	1	SMALL. Occupational safety and health hazards are generic to all types of electrical generating stations, including nuclear power plants, and are of small significance if the workers adhere to safety standards and use protective equipment as required by Federal and State regulations.
Electric shock hazards [4]	2	SMALL, MODERATE, or LARGE. Electrical shock potential is of small significance for transmission lines that are operated in adherence with the National Electrical Safety Code (NESC). Without a review of conformance with NESC criteria of each nuclear power plant's in-scope transmission lines, it is not possible to determine the significance of the electrical shock potential.
Postulated Accidents		
Design-basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design-basis accidents are of small significance for all plants.
Severe accidents	2	SMALL. The probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants. However, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives.
Environmental Justice		
Minority and low-income populations	2	Impacts to minority and low-income populations and subsistence consumption resulting from continued operations and refurbishment associated with license renewal will be addressed in plant-specific reviews. See NRC Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (69 FR 52040; August 24, 2004).
Waste Management		
Low-level waste storage and disposal	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment would remain small during the license renewal term.
Onsite storage of spent nuclear fuel	1	SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite during the license renewal term with small environmental effects through dry or pool storage at all plants.
Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.	N/A [5]	Uncertain impact. The generic conclusion on offsite radiological impacts of spent nuclear fuel and high-level waste is not being finalized pending the completion of a generic environmental impact statement on waste confidence.[7]
Mixed-waste storage and disposal	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal would not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small.
Nonradioactive waste storage and disposal	1	SMALL. No changes to systems that generate nonradioactive waste are anticipated during the license renewal term. Facilities and procedures are in place to ensure continued proper handling, storage, and disposal, as well as negligible exposure to toxic materials for the public and the environment at all plants.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Cumulative Impacts		
Cumulative impacts	2	Cumulative impacts of continued operations and refurbishment associated with license renewal must be considered on a plant-specific basis. Impacts would depend on regional resource characteristics, the resource-specific impacts of license renewal, and the cumulative significance of other factors affecting the resource.
Uranium Fuel Cycle		
Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste.	1	SMALL. The impacts to the public from radiological exposures have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts to individuals from radioactive gaseous and liquid releases, including radon-222 and technetium-99, would remain at or below the NRC's regulatory limits.
Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste.	1	There are no regulatory limits applicable to collective doses to the general public from fuel-cycle facilities. The practice of estimating health effects on the basis of collective doses may not be meaningful. All fuel-cycle facilities are designed and operated to meet the applicable regulatory limits and standards. The Commission concludes that the collective impacts are acceptable. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective impacts of the uranium fuel cycle, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle.	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant would be small.
Transportation	1	SMALL. The impacts of transporting materials to and from uranium-fuel-cycle facilities on workers, the public, and the environment are expected to be small.
Termination of Nuclear Power Plant Operations and Decommissioning		
Termination of plant operations and decommissioning.	1	SMALL. License renewal is expected to have a negligible effect on the impacts of terminating operations and decommissioning on all resources.

[1] Data supporting this table are contained in NUREG–1437, Revision 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (June 2013).

[2] The numerical entries in this column are based on the following category definitions:

Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review.

Category 2: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required.

[3] The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of ''small,'' may be negligible. The definitions of significance follow:

SMALL—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

MODERATE—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

For issues where probability is a key consideration (i.e., accident consequences), probability was a factor in determining significance.

[4] This issue applies only to the in-scope portion of electric power transmission lines, which are defined as transmission lines that connect the nuclear power plant to the substation where electricity is fed into the regional power distribution system and transmission lines that supply power to the nuclear plant from the grid.

[5] NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

[6] If, in the future, the Commission finds that, contrary to current indications, a consensus has been reached by appropriate Federal health agencies that there are adverse health effects from electromagnetic fields, the Commission will require applicants to submit plant-specific reviews of these health effects as part of their license renewal applications. Until such time, applicants for license renewal are not required to submit information on this issue.

[7] As a result of the decision of United States Court of Appeals in *New York* v. *NRC,* 681 F.3d 471 (DC Cir. 2012), the NRC cannot rely upon its Waste Confidence Decision and Rule until it has taken those actions that will address the deficiencies identified by the D.C. Circuit. Although the Waste Confidence Decision and Rule did not assess the impacts associated with disposal of spent nuclear fuel and high-level waste in a repository, it did reflect the Commission's confidence, at the time, in the technical feasibility of a repository and when that repository could have been expected to become available. Without the analysis in the Waste Confidence Decision and Rule regarding the technical feasibility and availability of a repository, the NRC cannot assess how long the spent fuel will need to be stored onsite.

Dated at Rockville, Maryland, this 11th day of June 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2013–14310 Filed 6–19–13; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 51 and 54

[NRC–2008–0608]

RIN 3150–AI42

Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 4.2, Supplement 1 (RG 4.2S1), ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications.'' This regulatory guide provides guidance to applicants in the preparation of environmental reports that are submitted with the application for the renewal of a nuclear power plant operating license. Applicants should use this regulatory guide when preparing an environmental report for license renewal to ensure that the information they submit to the NRC is complete and facilitates the NRC staff's review.

DATES: June 20, 2013.

ADDRESSES: Please refer to Docket ID NRC–2008–0608 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0608. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. Revision 1 of Regulatory Guide 4.2, Supplement 1, is available in ADAMS under Accession No. ML13067A354.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's Public Document Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Emmanuel Sayoc, telephone: 301–415–1924, email: *Emmanuel.Sayoc@nrc.gov,* or Edward O'Donnell, telephone: 301–251–7455, email: *Edward.Odonnell@nrc.gov*. U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing regulatory guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The NRC is publishing a final rule, ''Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses'' (RIN 3150–AI42; NRC–2008–0608), in the Rules and Regulations section of this issue of the **Federal Register** that amends its environmental protection regulations by updating the Commission's 1996 findings on the environmental impacts of renewing the operating license of a nuclear power plant. The NRC complies with the National Environmental Policy Act (NEPA) through the implementation of its regulations in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR) (see Table B–1 in Appendix B to Subpart A of 10 CFR part 51). The environmental reports submitted by license renewal applicants are part of the process set forth in 10 CFR part 51. The final rule incorporates lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996. Specifically, the final rule amends Table B–1 by redefining the number and scope of the environmental impact issues that must be considered by the NRC during license renewal environmental reviews and amends other related regulations in 10 CFR part 51 (*i.e.,* 10 CFR 51.53, 51.71, and 51.95). For renewal of nuclear power plant operating licenses, RG 4.2S1, Revision 1, provides guidance to applicants in the preparation of environmental reports.

Also in the Rules and Regulations section of this issue of the **Federal Register,** the NRC is publishing Revision 1 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (ADAMS Accession Nos. ML13106A241, ML13106A242, and ML13106A244); and Revision 1 to NUREG–1555, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal'' (ADAMS Accession No. ML13106A246).

II. Further Information

The NRC made the draft of Revision 1 of RG 4.2S1 available for public comment as Draft Guide (DG)–4015 on July 31, 2009 (74 FR 38238), with a 75-day public comment period. The NRC extended the public comment period for another 90 days, with a closing date of January 12, 2010 (74 FR 51522; October 7, 2009). The NRC received 3 public comments from the Nuclear Energy Institute, New York State Office of the Attorney General, and the United States Environmental Protection Agency. The NRC staff's response to public comments is available in ADAMS under Accession No. ML13067A355.

III. Congressional Review Act

This regulatory guide is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as designated in the Congressional Review Act.

IV. Backfitting and Issue Finality

This regulatory guide provides the NRC's first guidance on compliance with the revised provisions of 10 CFR part 51. The statement of considerations for the final rule that amended 10 CFR part 51 explains that issuance of the final rule does not constitute ''backfitting'' as defined in 10 CFR 50.109(a)(1) of the Backfit Rule and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52 (*see* Section XIX, ''Backfitting and Issue Finality,'' of the final rule). The first issuance of guidance on a new rule does not

constitute backfitting, inasmuch as the guidance must be consistent with the regulatory requirements in the new rule and the backfitting considerations applicable to the new rule must, as a matter of logic, also be applicable to this newly-issued guidance. Therefore, issuance of this new regulatory guide does not constitute issuance of ''new'' guidance within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Further, issuance of this guidance, like issuance of the final rule itself, does not constitute ''backfitting'' as defined in 10 CFR 50.109(a)(1) of the Backfit Rule nor does the issuance of this new regulatory guide, by itself, constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 23rd day of April, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–14313 Filed 6–19–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC–2008–0608]

RIN 3150–AI42

License Renewal of Nuclear Power Plants; Generic Environmental Impact Statement and Standard Review Plans for Environmental Reviews

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG–1437 and NUREG–1555; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is updating and revising NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (GEIS), which the NRC issued in May 1996. The revised GEIS provides the technical basis for amending certain NRC environmental protection regulations. The NRC has also revised NUREG–1555, Supplement 1, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal'' (ESRP). The ESRP serves as a guide to the NRC staff in preparing a plant-specific supplemental environmental impact statement to the GEIS. This document is announcing the issuance of NUREG–1437, Revision 1, and NUREG–1555, Revision 1.

DATES: NUREG–1437 and NUREG–1555 are effective June 20, 2013.

ADDRESSES: Please refer to Docket ID NRC–2008–0608 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0608. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS Accession No. for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The ADAMS Accession Nos. for the GEIS, NUREG–1437, are as follows: ML13107A023 for the package, ML13106A241 for Volume 1, ML13106A242 for Volume 2, and ML13106A244 for Volume 3. The ADAMS Accession No. for the ESRP, NUREG–1555, is ML13106A246.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Emmanuel Sayoc, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 1–800–368–5642, email: *Emmanuel.Sayoc@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion

In the Rules and Regulations section of this issue of the **Federal Register,** the NRC published a final rule, ''Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses'' (RIN 3150–AI42), that is amending its environmental protection regulations by updating and revising the Commission's 1996 findings on the environmental impacts of renewing the operating license of a nuclear power plant. The final rule redefines the number and scope of the environmental impact issues that must be addressed by the NRC during license renewal environmental reviews. Most of the amendments made by this final rule are based upon Revision 1 to the GEIS, which incorporates lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996.

Revision 1 to the GEIS is intended for use by license renewal applicants and the NRC staff. The NRC published the draft Revision 1 to the GEIS on July 31, 2009 (74 FR 38239), for a 75-day public comment period, ending on October 14, 2009. The NRC later extended the comment period to January 12, 2010 (74 FR 51522; October 7, 2009).

The intent of the GEIS is to determine which issues would result in the same impact at all nuclear power plants and which issues could result in different levels of impact at different plants and thus require a plant-specific analysis for impact determinations. Revision 1 to the GEIS identifies 78 environmental impact issues for consideration in license renewal environmental reviews, 59 of which have been determined to be generic to all plant sites. The GEIS also evaluates a full range of alternatives to the proposed action. For most impact areas, the proposed action (i.e., renewal of the plant's operating license) would have impacts that would be similar to or less than impacts of the alternatives, in large part because most alternatives would require new power plant construction, whereas the proposed action would not.

The NUREG–1437 consisted of two volumes when first issued by the NRC in 1996—the first volume consisting of the primary text and the second volume consisting of the GEIS appendices. Revision 1 of NUREG–1437 expands the GEIS to three volumes to meet internal NRC publication requirements for NUREG documents. Volume 1 contains the primary text of the GEIS; Volume 2 contains Appendix A, which consists of public comments and the NRC's responses thereto; and Volume 3 contains the remainder of the GEIS appendices.

The ESRP provides guidance to NRC staff in implementing the provisions in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' when conducting an environmental review for the renewal of

a nuclear power plant's operating license.

Concurrent with the final rule, GEIS revision, and ESRP revision, the NRC is also publishing in the Rules and Regulations section of this issue of the **Federal Register,** Revision 1 to Regulatory Guide (RG) 4.2, Supplement 1, *Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications*. The Accession No. for Revision 1 to RG 4.2 is ML13067A354. The RG 4.2 provides guidance to applicants for the preparation of environmental reports that are submitted as part of an application for the renewal of a nuclear power plant operating license in accordance with 10 CFR Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

During the public comment period, the NRC received 32 document submissions from industry stakeholders, representatives of Federal and State agencies, other interested parties, and members of the public. Each of these document submissions contained one or more comments. The NRC also received verbal comments at the six public meetings held during the public comment period, which contained, in aggregate, several hundred comments. These comments concerned or pertained to the proposed rule (74 FR 38117 published July 31, 2009) and to the draft revisions to the GEIS, ESRP and RG 4.2. A description of all public comments submitted on the draft revised GEIS and the NRC's response to those comments, are contained in Appendix A (Volume 2) of Revision 1 to the GEIS. A summary of all six public meetings is contained in the following document, ''Summary of Public Meetings to Discuss Proposed Rule Regarding Part 51 of Title 10 of the *Code of Federal Regulations* and the Draft Revision to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437, Revision 1 (November 3, 2009),'' and can be accessed in ADAMS under Accession No. ML093070141. Comments specific to the draft revised RG 4.2, which came from Federal and State agencies, and industry can be accessed in ADAMS under Accession No. ML13067A355. There were no comments specific to the ESRP.

II. Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 23rd day of April, 2013.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–14314 Filed 6–19–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Thursday,

No. 119 June 20, 2013

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse; Listing Determination for the New Mexico Meadow Jumping Mouse; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0014; 4500030114]

RIN 1018–AZ32

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this subspecies' critical habitat. The effect of these regulations will be to protect the New Mexico meadow jumping mouse's habitat under the Act.

DATES: We will accept comments received or postmarked on or before August 19, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 5, 2013.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2013–0014, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0014; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

The coordinates or plot points or both from which the proposed critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/southwest/es/NewMexico/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0014, and at the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113, by telephone 505–346–2525 or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), any species that is determined to be threatened or endangered requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. Elsewhere in today's **Federal Register**, we propose to list the New Mexico meadow jumping mouse as an endangered species under the Act.

This rule consists of: A proposed rule for designation of critical habitat for the New Mexico meadow jumping mouse. The New Mexico meadow jumping mouse has been proposed for listing under the Act. This rule proposes designation of critical habitat necessary for the conservation of the species.

The basis for our action. Under the Endangered Species Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The species has been proposed for listing as endangered, and therefore, we also propose to designate approximately 310.5 km (193.1 mi) of critical habitat within Bernalillo, Colfax, Mora, Otero, Rio Arriba, Sandoval, and Socorro Counties, in New Mexico; Las Animas, Archuleta, and La Plata Counties, Colorado; and Greenlee and Apache Counties, Arizona.

We are preparing an economic analysis of the proposed designations of critical habitat. In order to consider economic impacts, we are preparing a new analysis of the economic impacts of the proposed critical habitat designations and related factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek additional public review and comment.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of the New Mexico meadow jumping mouse and its habitat;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the New Mexico meadow jumping mouse and proposed critical habitat.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(7) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that listing and critical habitat determinations must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposal to list the New Mexico meadow jumping mouse as an endangered species under the Act published elsewhere in today's **Federal Register**.

Background

It is our intent to discuss below only those topics directly relevant to the proposed designation of critical habitat for the New Mexico meadow jumping mouse. For a thorough assessment of the species' biology and natural history including limiting factors and species resource needs, please refer to the May 2013 version of the New Mexico Meadow Jumping Mouse Species Status Assessment (SSA Report; Service 2013, entire, available online at *www.regulations.gov,* Docket No. FWS–R2–ES–2013–0014).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed

are included in a critical habitat designation if they contain physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of physical or biological features that provide for a species' life-history processes, and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species as reviewed in the May 2013 SSA Report (Service 2013, entire) and the proposed rule for listing the species as endangered (which is publishing simultaneously with this proposed rule in today's **Federal Register**). Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that the New Mexico meadow jumping mouse is currently threatened by collection, and mapping of critical habitat is not expected to initiate any such threat. In the absence of a finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species, and may provide some measure of benefit, we find that designation of critical habitat is prudent for the New Mexico meadow jumping mouse.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act, we must find whether critical habitat for the New Mexico meadow jumping mouse is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(2) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data

available and led us to conclude that the designation of critical habitat is determinable for the New Mexico meadow jumping mouse.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the New Mexico meadow jumping mouse from studies of this species' habitat, ecology, and life history as described below. Unfortunately, there have been relatively few studies on the New Mexico meadow jumping mouse and its natural life history, and information gaps remain. However, we have used the best available information as described in the May 2013 SSA Report (Service 2013, entire). To identify the physical and biological needs of the New Mexico meadow jumping mouse, we have relied on conditions at currently occupied locations where the New Mexico meadow jumping mouse has been observed during surveys, and the best information available on the species and its close relatives. Below, we summarize the physical and biological features needed by foraging, breeding, and hibernating New Mexico meadow jumping mice. For a complete review of the physical and biological features required by the New Mexico meadow jumping mouse, see Chapter 2 in the May 2013 SSA Report (Service 2013, Chapter 2).

For the New Mexico meadow jumping mouse to be considered viable, individual mice need specific vital resources for survival and completion of their life history. One of the most important aspects of the New Mexico meadow jumping mouse life history is that it hibernates about 8 or 9 months out of the year, longer than most mammals. Conversely, it is only active 3 or 4 months during the summer. Within this short time frame, it must breed, birth, and raise young, and store up sufficient fat reserves to survive the next year's hibernation period. In addition, New Mexico meadow jumping mice only live 3 years or less and have one small litter annually with 7 or fewer young, so the species has limited capacity for high population growth rates due to this low fecundity. As a result, if resources are not available in a single season, New Mexico meadow jumping mice populations would be greatly impacted.

The New Mexico meadow jumping mouse has exceptionally specialized habitat requirements to support these life-history needs and maintain adequate population sizes. Habitat requirements are characterized by tall (averaging at least 61 cm (24 in)), dense herbaceous (plants with no woody tissue) riparian vegetation composed primarily of sedges and forbs. This suitable habitat is found only when wetland vegetation achieves full growth potential associated with perennial flowing water. This vegetation is an important resource need for the New Mexico meadow jumping mouse because it provides vital food sources (insects and seeds), as well as the structural material for building day nests that are used for shelter from predators. It is imperative that the New Mexico meadow jumping mouse have rich abundant food sources during the summer so it can accumulate sufficient fat reserves to survive their long hibernation period because the species does not cache food for the winter. In addition, individual New Mexico meadow jumping mice also need intact upland areas adjacent to riparian wetland areas because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter.

These suitable habitat conditions need to be in appropriate locations and of adequate sizes to support healthy populations of the New Mexico meadow jumping mouse. Historically, these wetland habitats would have been in large patches located intermittently along long stretches of streams. The ability of New Mexico meadow jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize if populations are extirpated. Because counting individual New Mexico meadow jumping mice to assess population sizes is very difficult and data are unavailable, we can best measure population health by the size of the intact, suitable habitat available. We estimate that resilient populations of New Mexico meadow jumping mice need at least about 27.5 to 73.2 ha (68 to 181 ac) of suitable habitat along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals. This distribution and amount of suitable habitat would support multiple subpopulations of New Mexico meadow jumping mice throughout each of the waterways and would provide for sources of recolonization if some areas were extirpated due to disturbances, thereby increasing the chance of New Mexico meadow jumping mouse populations surviving the elimination or alteration of suitable habitat from a variety of sources and persisting while the necessary vegetation is restored. The suitable habitat patches must be relatively close together because the New Mexico meadow jumping mouse has limited dispersal capacity for natural recolonization. Range wide, we determined that the New Mexico meadow jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic conservation areas. This number and distribution of resilient populations is expected to provide the species with the necessary redundancy and representation to provide for viability.

Populations of New Mexico meadow jumping mice with a high likelihood of long-term viability require functionally connected areas throughout stream reaches, ditches, or canals. This continuous suitable habitat is necessary to attain the population sizes and densities needed to increase the probability that populations of the species will persist in the face of natural or manmade events and seasonal fluctuations of food resources. Because the species occurs only in areas that are water-saturated, populations have a high potential for extirpation when habitat dries due to ground and surface water depletion, draining of wetlands, or drought. New Mexico meadow jumping mouse habitat is subject to dynamic changes that result from flooding and drying of these waterways and the ensuing fluctuations (loss and regrowth) in the quantity and location of dense herbaceous riparian vegetation over time. Consequently, fluctuating water levels may create circumstances in which New Mexico meadow jumping mice population sizes and locations within a waterway vary over time, and populations may be periodically extirpated and subsequently recolonized. To encompass the daily

and seasonal movements of the majority of individual New Mexico meadow jumping mice and allow for the occasional inter-population dispersal to occur unimpeded, appropriately-sized patches of suitable habitat should be no more than about 100 m (330 feet) apart within these waterways.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the New Mexico meadow jumping mouse in the geographic area occupied by the species at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes (Service 2013, Chapter 2), we determine that the primary constituent elements (PCEs) specific to the New Mexico meadow jumping mouse consist of the following:

(1) Riparian communities along rivers and streams, springs and wetlands, or canals and ditches characterized by one of two wetland vegetation community types:

(a) Persistent emergent herbaceous wetlands dominated by beaked sedge (*Carex rostrata*) or reed canarygrass (*Phalaris arundinacea*) alliances; or

(b) Scrub-shrub riparian areas that are dominated by willows (*Salix* spp.) or alders (*Alnus* spp.); and

(2) Flowing water that provides saturated soils throughout the New Mexico meadow jumping mouse's active season that supports tall (average stubble height of herbaceous vegetation of at least 69 cm (27 inches) and dense herbaceous riparian vegetation (cover averaging at least 61 vertical cm (24 inches) composed primarily of sedges (*Carex* spp. or *Schoenoplectus pungens*) and forbs, including, but not limited to one or more of the following associated species: Spikerush (*Eleocharis macrostachya*), beaked sedge (*Carex rostrata*), reed canarygrass (*Phalaris arundinacea*), rushes (*Juncus* spp. and *Scirpus* spp.), and numerous species of grasses such as bluegrass (*Poa* spp.), slender wheatgrass (*Elymus trachycaulus*), brome (*Bromus* spp.), foxtail barley (*Hordeum jubatum*), or Japanese brome (*Bromus japonicas*), and forbs such as water hemlock (*Circuta douglasii*), field mint (*Mentha arvense*), asters (*Aster* spp.), or cutleaf coneflower (*Rudbeckia laciniata*); and

(3) Sufficient areas of 9 to 24 km (5.6 to 15 mi) along a stream, ditch, or canal that contain suitable or restorable habitat to support movements of individual New Mexico meadow jumping mice; and

(4) Include adjacent floodplain and upland areas extending approximately 100 m (330 ft) outward from the water's edge (as defined by the bankfull stage of streams).

This proposed designation is designed to support the necessary life-history functions of the species and the areas containing those PCEs in the appropriate quantity and spatial arrangement essential for the conservation of the species. We determined that these primary constituent elements of critical habitat provide for the physiological, behavioral, and ecological requirements of the species. New Mexico meadow jumping mice require herbaceous riparian vegetation associated with perennial (persistent) flowing water and adjacent uplands that can support the necessary habitat components needed by foraging, breeding, and hibernating individuals. New Mexico meadow jumping mice must also have sufficient cover within which to forage in an appropriate configuration and proximity to day, maternal, and hibernation nesting sites. This vegetation enables New Mexico meadow jumping mice to find adequate food resources not only to successfully raise young, but also to accumulate sufficient body fat for survival during hibernation. The appropriate configuration is provided by protecting multiple local populations throughout a minimum length of stream or ditch or canal of 9 to 24 km (5.6 to 15 mi) of suitable habitat that will ensure sufficient resiliency of populations such that the species will be able to withstand and recover from periodic disturbances. Therefore, this amount of suitable habitat would support multiple local populations throughout each of the waterways, thereby increasing the chance of New Mexico meadow jumping mouse populations surviving the elimination or alteration of suitable habitat from a variety of sources and persisting while the necessary vegetation is restored.

Populations of New Mexico meadow jumping mice with a high likelihood of long-term viability require functionally connected areas throughout stream reaches, ditches, or canals. This continuous suitable habitat is necessary to attain the population sizes and densities needed to increase the probability that populations of the species will persist in the face of natural or manmade events and seasonal fluctuations of food resources. This configuration of suitable habitat would encompass the daily and seasonal movements of the majority of individual New Mexico meadow jumping mice and would allow occasional inter-population dispersal to occur unimpeded.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Excessive grazing pressure, water use and management, highway reconstruction, development, severe wildland fires, unregulated recreation, the reduction in the distribution and abundance of beaver ponds. These threats have the potential to affect the PCEs if they are conducted within or adjacent to units proposed as critical habitat.

Management activities that could ameliorate these threats include, but are not limited to: (1) Maintenance of occupied New Mexico meadow jumping mouse sites with active management to continue the protection of these areas from livestock grazing; (2) restoring, enhancing, and managing additional habitat through fencing of riparian areas, especially the Santa Fe, Lincoln, and Apache-Sitgreaves National Forests, to restore the required vegetative components and support the expansion of populations of the New Mexico meadow jumping mouse located since 2005 into areas that were historically occupied by the species, but where natural expansion is currently unlikely because no suitable habitat remains; (3) restoring habitat on Bosque del Apache National Wildlife Refuge (NWR) or other areas by carefully managing mowing and removing willows older than 5 years to maintain early seral habitat conditions along irrigation canals and ditches; and (4) developing and implementing a beaver management or restoration plan for occupied and historic New Mexico meadow jumping mouse localities where appropriate. A more complete discussion of the threats to the jumping mouse and its habitats can be found in the May 2013 SSA Report (Service 2013, Chapter 5).

Criteria Used To Identify Critical Habitat

The following discussion describes the process and methodology that we used to identify the areas to propose as critical habitat units for the New Mexico meadow jumping mouse. As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. We relied heavily on the analysis of biological information reviewed in the SSA Report (Service 2013, Chapters 2 and 3). In accordance with section 3(5)(A) of the Act and its implementing regulation at 50 CFR 424.12(e), we determined the specific areas within the geographical area occupied by the species, at the time it is listed, where are found the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protections (described earlier). Next, we determined the specific areas outside the geographical area occupied by the species at the time it is listed that are found to be essential for the conservation of the species. Finally, we described how we determined the lateral extent and mapping processes used in developing the proposed critical habitat units.

Occupied Areas—Section 3(5)(A)(i) of the Act

Our initial step was to decide how to determine what areas are within the geographic area occupied by the New Mexico meadow jumping mouse at the time of listing (occupied areas). In reviewing all of the available data on New Mexico meadow jumping mouse occurrences, we decided that verified collections of the species between 2005 to 2012 would be used to identify the areas considered occupied by the New Mexico meadow jumping mouse at the time of listing. This timeframe was selected because we found no capture records of New Mexico meadow jumping mice between 1996 and 2005. For a detailed review of this assessment, see Chapter 3 of the May 2013 SSA Report (Service 2013) where we referenced historical records as those from the 1980s and 1990s and current records as those verified from 2005 to 2012. This assessment resulted in 29 locations of the New Mexico meadow jumping mouse considered occupied at the time of listing. However, there is uncertainty regarding the current status of the 29 populations that have been found since 2005 because 11 of the 29 populations have been substantially compromised since 2011 (due to water shortages, grazing, or wildfire and postfire flooding), and these populations could already be extirpated. Moreover, an additional seven populations may continue to experience loss of habitat from postfire flooding in the near term. Nevertheless, since no newer information has shown the New Mexico meadow jumping mouse to be extirpated from any of these locations, we find that the best available information supports considering these areas to be within the geographic area occupied by the New Mexico meadow jumping mouse at the time of listing.

The occupied areas include the 29 locations that contain suitable habitat plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these capture localities. These additional 0.8-km (0.5-mi) segments are considered occupied because this is approximately the maximum dispersal distance that an individual New Mexico meadow jumping mouse has been observed to travel (744 meters, 2,441 feet; Frey and Wright 2012, pp. 16, 109). Although the species usually exhibits extreme site fidelity with regular daily and seasonal movements of less than 100 m (330 feet) (Frey and Wright 2012, pp. 16, 109), these additional 0.8-km (0.5-mi) segments have the potential to be occupied during the active season of the species if a New Mexico meadow jumping mouse moves the maximum known distance beyond the protective herbaceous cover found within the 29 locations. For each of the occupied areas, we next decided whether these areas contain the essential elements of physical and biological features which may require special management considerations or protections (PCEs and special management are described above). As noted, all of the 29 locations found since 2005 are considered currently occupied by the New Mexico meadow jumping mouse and contain the essential PCEs (1 and 2), indicating each area requires special management considerations or protections to maintain those PCEs. Each of these 29 locations documented since 2005 occur within 1 of the 19 units or subunits (some units or subunits contain multiple occupied locations) proposed as critical habitat for the New Mexico meadow jumping mouse. For a site-by-site analysis of the 29 locations, see the May 2013 SSA Report Chapter 4 (Service 2013).

Partially Occupied Areas—Section 3(5)(A)(ii) of the Act

We then decided which areas that are outside the geographic area occupied by the species at the time of listing (unoccupied areas) are essential for the conservation of the New Mexico meadow jumping mouse. We first determined that, because of the loss of a substantial number (approximately 70) of historically occupied locations of the New Mexico meadow jumping mouse (Service 2013, Chapter 4) the number and distribution of populations should be increased at all of the currently occupied areas for the New Mexico meadow jumping mouse to be viable. The populations at these areas are needed to maintain sufficient redundancy and representation to provide for species viability (see Service 2013, Chapters 3 and 6). However, the areas occupied by the mouse since 2005 do not contain enough suitable, connected habitat to support resilient populations of New Mexico meadow jumping mouse (Service 2013, Chapter 3).

Because the species needs multiple local populations along streams and other waterways to maintain genetic diversity and provide sources for recolonization when local populations are extirpated, it was important that we consider areas adjacent to the locations considered occupied by the mouse since 2005 to provide for population resiliency and species viability. We found that it is essential for the conservation of the New Mexico meadow jumping mouse to expand its occupied habitats into areas considered currently unoccupied, but within its historical range. The inclusion of essential but unoccupied areas will not only protect these segments and provide habitat for population expansion from the 29 locations documented since 2005, but also provide sites for possible future reintroduction that will improve the species' status through added population resiliency. For example, when unoccupied habitat is restored, the New Mexico meadow jumping mouse would have the ability to expand beyond the 0.8-km (0.5-mi) segments surrounding each of the 29 locations and populate the individual stream reaches or waterways. Consequently, the currently unoccupied segments within individual stream reaches or waterways need to be of sufficient size to allow for the expansion of current and future populations and provide connectivity (active season movements and dispersal) between multiple populations as they become established.

So for each of the 19 areas (encompassing 29 locations) considered occupied, we proposed critical habitat units that include areas that are considered unoccupied adjacent to the occupied areas. The currently occupied areas contain the essential PCEs (1 and 2), indicating each area requires special management considerations or protections to maintain those PCEs;

however, the unoccupied areas are essential for the restoration of the essential PCEs (1, 2, 3, and 4) along streams and other waterways. Each of these units or subunits are considered ''partially occupied'' because they include some small areas that have been occupied by the species since 2005 and other larger areas upstream or downstream that are not known to be occupied by the New Mexico meadow jumping mouse at the time of listing.

To decide what areas of unoccupied habitat should be included in proposed critical habitat units that are partially occupied, we focused on areas that had historical collection records confirmed to be the New Mexico meadow jumping mouse. Capture locations were then used to approximate previously occupied habitat and guide our proposed critical habitat areas. We then identified areas of potential habitat that have been recently restored, areas that likely still contain the habitat characteristics sufficient to support the life history of the species, or areas where functionally connected patches of suitable habitat will be required to provide for resilient populations and conserve the species.

In considering how much area to include in proposed critical habitat units we considered how much suitable habitat might be needed to support resilient populations. In reviewing the available information, we think that New Mexico meadow jumping mouse populations generally need connected areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi) of continuous suitable habitat to support viable populations of New Mexico meadow jumping mice with a high likelihood of long-term persistence (Service 2013, Section 2.7). This stream length is twice the length recommended by Frey (2011, p. 29) because we think it is important to account for the ability of populations to have a higher probability of withstanding catastrophic events such as wildfire. We used this length as a general guide for determining proposed critical habitat areas along waterways, but each unit and subunit were evaluated on a site-by-site basis to determine the best configuration of proposed critical habitat to support New Mexico meadow jumping mouse populations in that unit or subunit.

In proposing critical habitat boundaries, we also considered the need for movement and dispersal to occur between suitable habitat areas within a proposed critical habitat unit or subunit. We do not anticipate that suitable habitat containing dense riparian herbaceous vegetation will be continuous throughout each of the critical habitat units or subunits, but rather, that suitable habitat should be disperse throughout waterways to allow for natural behaviors and perhaps occasional longer distance (i.e., from 200 to 700 m (656 to 2,297 ft)) exploratory movements (Frey and Wright 2012, p. 109), including dispersal.

These movement and dispersal corridors are needed to connect sites that we consider occupied to one another within individual units or subunits, but not among units or subunits, which will enhance genetic exchange between New Mexico meadow jumping mouse populations and allow for natural recolonization if local populations are extirpated (Service 2013, Section 2.6). Historically, populations were likely distributed throughout drainages, with a series of interconnected local populations (also called subpopulations) occupying suitable habitat patches within individual streams. Interconnected local populations were likely arranged within suitable habitat patches along streams in such a way that individuals could fulfill their daily and seasonal movements of about 100 m (330 feet), but also occasionally move greater distances (i.e., 200 to 744 m (656 to 2,441 ft)) to disperse to other habitat patches within stream segments (Frey and Wright 2012, p. 109). This ability to have multiple local populations is important to maintaining genetic diversity within the populations along streams and providing sources for recolonization when local populations are extirpated. For example, if a site is extirpated, recolonization from persisting local source populations within the same general area would have to occur along riparian corridors that contain suitable habitat (Frey 2011, p. 41).

As a result, the most likely routes for dispersal of New Mexico meadow jumping mice among sites would occur along perennial or intermittent drainages where habitat is present or restorable. Although we did not select specific areas in which to designate movement corridors, we assumed perennial drainages are better movement corridors than ephemeral or intermittent drainages, and the ephemeral or intermittent drainages are better movement corridors than upland routes. We also assume that, if all else is equal, the shorter the route the more likely New Mexico meadow jumping mice will successfully move. Because New Mexico meadow jumping mouse habitat is subject to the dynamic process of flooding, inundation, and drought, the extent and location of riparian corridors along streams and rivers may not remain constant and, depending on local conditions, are likely to expand and contract. Nevertheless, areas containing suitable habitat should be no more than about 100 m (330 feet) apart within these waterways, which would encompass the majority of daily and seasonal movements of individual New Mexico meadow jumping mice (Wright and Frey 2012, p. 109). This configuration of habitat provides for a local population to be ''functionally connected,'' such that the movements of the majority of individual New Mexico meadow jumping mice and perhaps occasional interpopulation dispersal occur unimpeded.

As a result of this analysis, we have determined that some of the areas within the proposed critical habitat units do not contain currently suitable habitat and are beyond the maximum known dispersal distance of 0.8 km (0.5 mi) to be considered occupied at any point in time. For example, within proposed Unit 2 we include the Harold Brock Fishing Easement that is located between the two sites that we consider occupied on Coyote Creek. The fishing easement is considered unoccupied because it does not currently contain suitable habitat and is beyond the daily and seasonal movement capacity of the species. Increasing the amount of suitable habitat in units like Coyote Creek is essential because it expands the available habitat within a given unit that can be occupied by the species and provides for potentially increasing population size within that riparian system. Increased population sizes are essential to conserving the species as higher numbers of individuals in the populations increases the likelihood of the persistence of the populations over time, in other words larger populations increase population resiliency.

Completely Unoccupied Areas—Section 3(5)(A)(ii) of the Act

We next considered whether there were any other areas within the species' historical range but outside of the geographic area occupied at the time of listing (in other words completely unoccupied areas) that are essential for the conservation of the New Mexico meadow jumping mouse. In other words, we examined whether resilient populations at the 19 partially occupied proposed units (with 29 locations occupied since 2005) would be sufficient to provide for viability of the New Mexico meadow jumping mouse. We reviewed the current and historical distribution of the species within each of the eight conservation areas across its range and the need for sufficient redundancy for the New Mexico

meadow jumping mouse (Service 2013, Chapter 3). With three exceptions, we found that each of the conservation areas would have sufficient populations to support species viability if the current New Mexico meadow jumping mouse areas were expanded to provide for resilient populations. The exceptions where the historic distribution is not adequately represented by recently located populations were in the Jemez Mountains, the Sacramento Mountains, and the Rio Grande conservation areas. We found that the conservation of the species requires increasing the number and distribution of populations of the New Mexico meadow jumping mouse to allow for the restoration and expansion of recently located populations into areas that were historically occupied within the Jemez Mountains, Sacramento Mountains, and the middle Rio Grande.

We found four subunits (described under the Jemez Mountains, Sacramento Mountains, and middle Rio Grande Units below) within three conservation areas that are completely unoccupied, but are essential for the conservation of the New Mexico meadow jumping mouse. Inclusion of these areas provides for expansion of the overall geographic distribution of the species and increases the redundancy within these conservation areas. Much of the habitat within these four unoccupied subunits (Rio de las Vacas, Upper Rio Peñasco, Isleta Pueblo, and Ohkay Owingeh) contained New Mexico meadow jumping mice as recently as the late 1980s (Morrison 1985, entire; 1988, pp. 22–35; 1989, pp. 7–23; 1992, p. 311; Frey 2005a, p. 7). For each of these unoccupied subunits, we found that, because of ongoing habitat loss, the conservation of the New Mexico meadow jumping mouse requires the protection of stream reaches with a high potential for restoration of suitable habitat to enable the reestablishment of the New Mexico meadow jumping mouse within areas that were historically occupied. The protection and restoration of suitable habitat within these areas will enable the reestablishment of the New Mexico meadow jumping mouse and increase its distribution to provide population redundancy and resiliency.

In evaluating what areas are essential for the New Mexico meadow jumping mouse, we do not propose as critical habitat a number of historical locations of the New Mexico meadow jumping mouse because we do not think they are essential for conservation of the species. These omitted locations are, compared to other habitat segments, believed to be of lesser quality and do not contribute as much to connectivity, stability, or protection against catastrophic loss. Consequently, we are not proposing historical locations along riparian segments as critical habitat because we did not find them to be essential for conservation of the New Mexico meadow jumping mouse.

Lateral Extent

To allow normal behavior and to ensure that the New Mexico meadow jumping mouse and the physical and biological features and sufficient PCEs on which it depends are protected, we believe that the outward extent of critical habitat from the riparian habitats should at least approximate the 100-year floodplain. Unfortunately, floodplains have not been mapped for many streams within the New Mexico meadow jumping mouse's range. While alternative delineation of critical habitat based on geomorphology and existing vegetation could accurately portray the presence and extent of required habitat components, we lack the explicit data to allow us to conduct such a delineation of critical habitat on a site-by-site basis. Moreover, some locations are associated with canals and ditches (e.g., Bosque del Apache NWR) that are manmade and do not have any associated floodplain. To address these issues, we propose to use a set distance of 100 m (328 ft) outward from either side of the river, stream, irrigation ditch, or canal's edge. The river, stream, irrigation ditch or canal's edge is defined by the bankfull stage. We believe this width is necessary to accommodate not only stream meandering and high flows within natural waterways, but also to capture essential upland areas in order to ensure that this proposed designation contains the features essential to all of the life-history stages (e.g., foraging, breeding, and hibernation) and the conservation of the species (Service 2013, Chapter 3). While this lateral extent of critical habitat may not extend outward to all areas used by individual mice over time, we expect that it will support the full range of PCEs essential for conservation of New Mexico meadow jumping mouse populations in these reaches.

Bankfull stage is defined as the upper level of the range of channel-forming flows, which transport the bulk of available sediment over time. Bankfull stage is generally considered to be that level of stream discharge reached just before flows spill out onto the adjacent floodplain. The discharge that occurs at bankfull stage, in combination with the range of flows that occur over a length of time, govern the shape and size of the river channel (Rosgen 1996, pp. 2–2 to 2–4). The use of bankfull stage and 100 m (328 ft) on either side recognizes the naturally dynamic nature of riverine systems, recognizes that floodplains are an integral part of the stream ecosystem, and contains the area and associated features essential to the conservation of the species. Bankfull stage is not an ephemeral feature, meaning it does not disappear. Bankfull stage can always be determined and delineated for any stream and for the canals and ditches we are proposing as critical habitat. We acknowledge that the bankfull stage of any given segment may change depending on the magnitude of a flood event, but it is a definable and standard measurement for stream systems. Following high flow events, stream channels can move from one side of a canyon to the opposite side, for example. If we were to designate critical habitat based on the location of the stream on a specific date, the area within the designation could be a dry channel in less than 1 year from the publication of the determination, should a high flow event occur.

Mapping

The critical habitat units that we propose were first delineated by creating rough areas for each unit by screen-digitizing polygons (map units) using Google Earth. We then digitized and refined the units using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a computer Geographic Information System (GIS) program. The polygons were created by using current (2005 to 2012) and historical species (1985 to 1996) location points, which were then used in conjunction with hydrology, vegetation, and expert opinion. The location points were split into current and historical groups because we found no capture records of New Mexico meadow jumping mice between 1996 and 2005.

We set the limits of each critical habitat unit by identifying landmarks (islands, confluences, roadways, crossings, dams) that clearly delineated each area. Stream confluences are often used to delineate the boundaries of a unit for an aquatic species because the confluence of a tributary typically marks a significant change in the size or habitat characteristics of the stream. Stream confluences are also logical and recognizable termini. When a named tributary was not available, or if another landmark provided a more recognizable boundary, another landmark was used.

When current or historical locations of New Mexico meadow jumping mice were used to delineate upstream and downstream boundaries of critical habitat, we extended the boundaries by

about 0.8 km (0.5 mi) to encompass areas that have the potential to be occupied during the active season of the species if a New Mexico meadow jumping mouse moves the maximum known distance beyond the protective herbaceous cover. However, we then refined the starting and end points by evaluating appropriate habitat conditions based on the presence or absence of perennial water or suitable vegetation. We selected upstream and downstream cutoff points that would avoid including highly degraded areas that are not likely restorable. For example, we did not include areas that were permanently dewatered or permanently developed (i.e., natural vegetation removed), or areas in which there was some other indication that suitable habitat no longer existed and was not likely to be restored.

When determining proposed critical habitat boundaries, we also made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the New Mexico meadow jumping mouse. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Summary

In summary, we are proposing for designation of critical habitat geographic areas that we have determined are occupied by the New Mexico meadow jumping mouse at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species and that require special management. Moreover, we are proposing to designate as critical habitat additional areas that are considered presently unoccupied, but essential to the conservation of the New Mexico meadow jumping mouse.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0014, at *http://www.fws.gov/southwest/es/NewMexico/,* and at the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing to designate approximately 310.5 km (193.1 mi) (5,892 ha (14,560 ac)) in eight units as critical habitat for the New Mexico meadow jumping mouse in the states of Colorado, New Mexico, and Arizona. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the New Mexico meadow jumping mouse. The units we propose as critical habitat and the approximate area of each proposed critical habitat unit and land ownership are shown in Table 1. A summary of the proposed areas by land ownership and State are provided in Table 2.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE

[Area estimates reflect all land within critical habitat unit boundaries.]

Stream segment	Occupied at the time of listing	Land ownership	Length of unit, km (mi)	Area, ha (ac)
Unit 1—Sugarite Canyon				
Chicorica Creek	Partial	State of New Mexico, State of Colorado, Private		229 (568) 114 (282) 344 (849)
Total Unit 1			13.0 (8.1)	687 (1698)
Unit 2—Coyote Creek				
Coyote Creek	Partial	State of New Mexico, Private		26 (64) 213 (527)
Total Unit 2			11.8 (7.4)	239 (590)
Unit 3—Jemez Mountains				
Subunit 3A—San Antonio				
San Antonio Creek	Partial	Forest Service, Private, Other Federal Agency		223 (550) 10 (26) 1 (3)
Total Subunit 3A			11.5 (7.1)	234 (579)
Unit 3B—Rio Cebolla				
Rio Cebolla	Partial	Forest Service, Private, State of New Mexico		278 (686) 76 (187) 76 (187)
Total Subunit 3B			20.7 (12.9)	429 (1060)
Unit 3C—Rio de las Vacas				

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Stream segment	Occupied at the time of listing	Land ownership	Length of unit, km (mi)	Area, ha (ac)
Rio de las Vacas	No	Forest Service, Private		332 (820) 122 (302)
Total Subunit 3C			23.3 (14.5)	454 (1122)
Total Unit 3			55.5 (34.5)	1117 (2761)
Unit 4—Sacramento Mountains				
Subunit 4A—Silver Springs				
Silver Springs Creek	Partial	Forest Service, Private		28 (70) 77 (190)
Total Subunit 4A			5.2 (3.2)	105 (260)
Subunit 4B—Upper Peñasco				
Rio Peñasco	No	Forest Service, Private		18 (44) 118 (291)
Total Subunit 4B			6.4 (4.0)	136 (335)
Subunit 4C—Middle Peñasco				
Rio Peñasco	Partial	Forest Service, Private		26 (65) 238 (587)
Total Subunit 4C			11.4 (7.1)	264 (652)
Subunit 4D—Wills Canyon				
Mauldin Springs	Partial	Forest Service, Private		65 (162) 46 (113)
Total Subunit 4D			5.5 (3.4)	111 (275)
Subunit 4E—Agua Chiquita Canyon				
Agua Chiquita Creek	Partial	Forest Service		161 (398)
Total Subunit 4E			7.7 (4.8)	161 (398)
Total Unit 4			36.2 (22.5)	777 (1920)
Unit 5—White Mountains				
Subunit 5A—Little Colorado				
Little Colorado River	Partial	Forest Service, Private		445 (1100) 33 (81)
Total Subunit 5A			22.6 (14.0)	478 (1181)
Subunit 5B—Nutrioso				
Nutrioso River	Partial	Forest Service, Private		142 (351) 271 (670)
Total Subunit 5B			20.4 (12.7)	413 (1021)
Subunit 5C—San Francisco				
San Francisco River	Partial	Forest Service, Private		68 (167) 184 (455)
Total Subunit 5C			11.8 (7.3)	252 (622)
Subunit 5D—East Fork Black				
East Fork Black River	Partial	Forest Service		421 (1040)
Total Subunit 5D			20.3 (12.6)	421 (1040)
Subunit 5E—West Fork Black				
West Fork Black River	Partial	Forest Service, Private, State of Arizona		415 (1025) 17 (43) 49 (120)
Total Subunit 5E			23.0 (14.3)	481 (1188)
Subunit 5F—Boggy and Centerfire				
Boggy and Centerfire Creeks	Partial	Forest Service		196 (485)
Total Subunit 5F			8.9 (5.5)	196 (485)
Subunit 5G—Corduroy				
Corduroy Creek	Partial	Forest Service		104 (256)

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Stream segment	Occupied at the time of listing	Land ownership	Length of unit, km (mi)	Area, ha (ac)
Total Subunit 5G			4.8 (3.0)	104 (256)
Subunit 5H—Campbell Blue				
Campbell Blue Creek	Partial	Forest Service, Private		100 (247) 2 (6)
Total Subunit 5H			4.8 (3.0)	102 (253)
Total Unit 5			116.6 (72.4)	2448 (6047)
Unit 6—Middle Rio Grande				
Subunit 6A—Isleta Marsh				
Marsh	No	Isleta Pueblo	3.7 (2.3)	43 (105)
Subunit 6B—Ohkay Owingeh				
Marsh	No	Ohkay Owingeh	4.8 (3.0)	51 (125)
Subunit 6C—Bosque del Apache NWR				
Canal	Partial	Service	21.1 (13.1)	201 (496)
Total Unit 6			29.6 (18.5)	294 (727)
Unit 7—Florida				
Florida River	Partial	Private, Bureau of Land Mgt		254 (627) 3 (6)
Total Unit 7			13.6 (8.4)	256 (634)
Unit 8—Sambrito Creek				
Sambrito Creek	Partial	State of Colorado, Private		61 (150) 14 (35)
Total Unit 8			4.6 (2.9)	75 (184)
GRAND TOTAL ALL UNITS			310.5 (193.1)	5892 (14,560)

Note: Area sizes may not sum due to rounding.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE, SUMMARIZED BY LAND OWNERSHIP AND STATE

State	Land ownership, ha (ac)				
	Federal	State	Private	Tribal	Total
New Mexico	(3,294)	(819)	(3,072)	(230)	(7,415)
Arizona	(4,671)	(120)	(1,255)		(6,046)
Colorado	(6)	(432)	(662)		(1,100)
Total	(7,971)	(1,371)	(4,989)	(230)	(14,561)

Unit Descriptions

We present brief descriptions of each of the proposed critical habitat units, and reasons why they meet the definition of critical habitat for the New Mexico meadow jumping mouse, below. For additional information on each unit, see the SSA (Service 2013, Chapter 4).

We consider the 29 locations where the New Mexico meadow jumping mouse has been found since 2005 to be within the geographic area occupied at the time of listing (occupied areas). All of these occupied areas are contained within 19 of the 23 proposed critical habitats units that we refer to as partially occupied in Table 1. The exceptions are the completely unoccupied units (3–C Rio de las Vacas, 4–B Upper Rio Peñasco, 6–A Isleta Pueblo, and 6–B Ohkay Owingeh 3–C). We specifically describe each of the occupied areas within the proposed critical habitat unit descriptions presented below. All of these occupied areas contain suitable habitat with one or more of the essential physical or biological features that require special management and are, therefore, included in the proposed designation under section 3(5)(A)(i) of the Act. All of these occupied areas exhibit: PCE 1—appropriate wetland vegetation communities and PCE 2—flowing water with tall herbaceous vegetation. The occupied areas within these 19 proposed units may require special management or protection to address the direct or indirect loss or alteration of the essential physical and biological features. These special management considerations or protections are needed

to address: Water development, recreational use, livestock grazing, road reconstruction, the loss of beaver ponds, and vegetation mowing.

Every proposed critical habitat unit contains areas outside the geographic area occupied by the species at the time of listing (unoccupied areas) that we conclude are essential for the conservation of the New Mexico meadow jumping mouse. As noted, four of these units (3–C Rio de las Vacas, 4–B Upper Rio Peñasco, 6–A Isleta Pueblo, and 6–B Ohkay Owingeh 3–C) are considered completely unoccupied. The remaining 19 proposed critical habitat units include unoccupied areas that are up- or downstream of the occupied areas, but do not currently have the necessary vegetation to protect New Mexico meadow mice from predators or to provide food sources. We describe these units containing both occupied and unoccupied areas within the same stream reach as partially occupied (Table 1). All of these completely or partially unoccupied areas currently have flowing water to allow for future restoration of the essential PCEs 1 and 2, but also PCE 3—sufficient areas of streams, ditches or canals; and PCE 4—adjacent floodplain and upland areas that would collectively provide the needed physical and biological features of habitat required to sustain the species' life-history processes.

We conclude that all of these areas, whether they are within partially or completely unoccupied proposed units, are essential to the conservation of the New Mexico meadow jumping mouse because: (1) The areas occupied by the mouse since 2005 do not contain enough suitable, connected habitat to support resilient populations of New Mexico meadow jumping mouse; (2) the currently unoccupied segments within individual stream reaches or waterways need to be of sufficient size to allow for the expansion of populations and provide connectivity (active season movements and dispersal) between multiple populations as they become established; (3) additional areas need habitat protection to allow restoration of the necessary herbaceous vegetation for possible future reintroductions; and (4) multiple local populations along streams are important to maintaining genetic diversity within the populations and for providing sources for recolonization if local populations are extirpated. Therefore, all of the unoccupied areas are included in the proposed designation under section 3(5)(A)(ii) of the Act.

Unit 1: Sugarite Canyon

Unit 1 consists of 687 ha (1,698 ac) along 13.0 km (8.1 mi) of streams on private lands and areas owned by the States of Colorado and New Mexico. The Colorado streams areas are found within Las Animas County, Colorado, and the New Mexico stream areas are found within Colfax County, New Mexico. The unit begins 0.6 km (0.4 mi) north of the headwaters of Lake Dorothey, Colorado, along the East Fork and 1.1 km (0.7 mi) north of the headwaters of Lake Dorothey along the West Fork of Schwacheim Creek and follows the drainage downstream, to include a 2.0 km (1.25 mi) segment of Chicorica Creek that is a tributary flowing into the headwaters of Lake Maloya and a 0.8 km (0.5 mi) segment of Segerstrom Creek which is a tributary flowing into the western edge of Lake Maloya, New Mexico. The unit continues through Lake Maloya and includes about 1.8 km (1.1 mi) of the small western tributary Soda Pocket Creek, which flows into and includes lower Chicorica Creek below Lake Maloya Dam downstream to the terminus of the area at Lake Alice Dam within Sugarite Canyon State Park.

Based upon captures of the New Mexico meadow jumping mouse since 2005 (Frey 2006d, pp. 19–21, 67) approximately 2.8 ha (7 ac) within this unit in Sugarite Canyon State Park in New Mexico are considered occupied at the time of listing and contain suitable habitat. The occupied areas occur along the Canyon at five locations: Chicorica Creek 0.6 km (0.4 mi) below Lake Maloya Dam; Segerstrom Creek just above the western confluence with Lake Maloya; the headwaters of Lake Alice; and Soda Pocket Creek and Campground along the two streams that cross the open meadow on Barlett Mesa near the campfire program area and behind campsite number 16 (Frey 2006d, pp. 19–21, 67). In 2011, the Track Fire burned nearly the entire watershed of Sugarite Canyon, and surveys have not been conducted to determine whether New Mexico meadow jumping mice still persist postfire (Service 2012c). However, until new information is collected we consider this area within the geographical area occupied by the New Mexico meadow jumping mouse at the time of listing. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, water use and management, floods, the reduction in the distribution and abundance of beaver ponds, and coalbed methane. The occupied areas are centered around the five capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Unit 1 are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Unit 2: Coyote Creek

Unit 2 consists of 239 ha (590 ac) along 11.8 km (7.4 mi) of Coyote Creek on private lands and an area owned by the State of New Mexico within Mora County. The unit begins at the confluence of Little Blue Creek and Coyote Creek and extends downstream about to the terminus just south of the Village of Guadalupita.

Based upon captures of the New Mexico meadow jumping mouse since 2006 (Frey 2006d, pp. 24, 70; Frey 2012, p. 6), approximately 1.7 ha (4.3 ac) within this unit in Coyote Creek State Park and several miles north of the park along Highway 434 in New Mexico are considered occupied at the time of listing and contain suitable habitat. The occupied areas occur at two locations along Coyote Creek including: an area that contains extensive beaver ponds, dams, and canals and is located between the only vehicle bridge within the southwestern part of Coyote Creek State Park and the southern boundary of the park; and within another area that contains extensive beaver activity about 1.9 km (1.2 mi) south of the confluence of Little Blue Creek and Coyote Creek. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, recreation, grazing, water use and management, floods, the reduction in the distribution and abundance of beaver ponds, and development. The occupied areas are centered around the two capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Unit 2 are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Unit 3: Jemez Mountains

Unit 3 consists of 1,118 ha (2,761 ac) of streams within three subunits on private lands and areas owned by the Forest Service and the State of New Mexico within Sandoval County, New Mexico. Areas proposed for critical habitat for the New Mexico meadow jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the Jemez Mountains with the capability to support the breeding and reproduction of the species.

Subunit 3–A; San Antonio Creek

Subunit 3–A consists of 234 ha (579 ac) along 11.5 km (7.1 mi) of San Antonio Creek on private lands and areas owned by the Forest Service. This subunit begins along the northern part of San Antonio Creek where it exits the boundary of the Valles Caldera National Preserve and follows the creek through mostly Forest Service lands where it meets private land immediately downstream of the San Antonio Campground.

Based upon the capture of one New Mexico meadow jumping mouse since 2005 (Frey 2005a, pp. 15, 24, 58), approximately 0.4 ha (1 ac) within this unit along San Antonio Creek are considered occupied at the time of listing and contain suitable habitat. The occupied area is located within a wet meadow near the southwestern part of San Antonio Campground (Frey 2005a, pp. 15, 24, 58). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 3–A are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 3–B; Rio Cebolla

Subunit 3–B consists of 429 ha (1,060 ac) along 20.7 km (12.9 mi) of the Rio Cebolla on private lands and areas owned by the Forest Service and the State of New Mexico. This subunit extends from an old beaver dam about 0.6 km (0.4 mi) north of Hay Canyon downstream about where it meets the Rio de las Vacas.

Based upon captures of the New Mexico meadow jumping mouse since 2005 (Frey 2005a, pp. 23–28, 37–38; Frey 2007b, p. 11), approximately 10.7 ha (26.4 ac) within this unit on State of New Mexico and Forest Service lands in New Mexico are considered occupied at the time of listing and contain suitable habitat. The occupied areas occurs at six locations along the Rio Cebolla: near the western edge of the northwestern pond along the access road within the New Mexico Department of Game and Fish's Seven Springs Hatchery; within Fenton Lake State Park at the upper end of Fenton Lake Marsh above Highway 126 and the New Mexico Highway 126 bridge; within Fenton Lake State Park Day Use Area at the mouth of a small tributary that enters the southwest side of Fenton Lake; within Lake Fork Canyon inside a livestock exclosure above the bridge on Forest Road 376; within a network of channels, beaver ponds, and wet meadows about 0.9 kilometers (0.6 miles) southwest of Forest Road 376 bridge; and about 2.7 km (1.7 mi) north of the confluence of the Rio Cebolla and the Rio de las Vacas (Frey 2005a, pp. 23–28, 37–38; Frey 2007b, p. 11). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, recreation, grazing, floods, the reduction in the distribution and abundance of beaver ponds, development, and highway reconstruction. The occupied areas are centered around the six capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Subunit 3–B are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 3–C; Rio de las Vacas

Subunit 3–C consists of 454 ha (1,122 ac) along 23.3 km (14.5 mi) of the Rio de las Vacas on private lands and areas owned by the Forest Service. This subunit starts about 0.8 km (0.5 mi) north of Forest Road 94 adjacent to Burned Canyon and extends downstream to the confluence with the Rio Cebolla Subunit.

Although much of the habitat was historically occupied with individuals detected as recently as 1989 (Morrison 1985; 1992, p. 311; Frey 2005a, p. 7), no New Mexico meadow jumping mice were captured during surveys in 2005 (Frey 2005a, p. 18). The entire subunit is considered unoccupied at the time of listing. All of the areas within the Subunit 3–C are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Unit 4: Sacramento Mountains

Unit 4 consists of 777 ha (1,920 ac) of streams within five subunits on private lands and areas owned by the Forest Service within Otero County, New Mexico. Areas proposed for critical habitat for the New Mexico meadow jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the Sacramento Mountains with the capability to support the breeding and reproduction of the species.

Subunit 4–A; Silver Springs

Subunit 4–A consists of 105 ha (260 ac) along 5.2 km (3.2 mi) of Silver Springs Creek on private lands and areas owned by the Forest Service. This subunit begins about 0.3 km (0.2 mi) north of the intersection of Forest Road 162 and New Mexico Highway 244 and follows Silver Springs Creek downstream to the boundary of Forest Service and Mescalero Apache lands.

Based upon the capture of one New Mexico meadow jumping mouse since 2005 (Frey 2005a, p. 31), approximately 5.4 ha (13.3 ac) within this unit on Forest Service lands in New Mexico are considered occupied at the time of listing. The occupied area is located within a grazing exclosure containing well-developed riparian habitat about 7.4 km (4.6 mi) north of Cloudcroft along middle Silver Springs Creek, at Junction of Turkey Pen Canyon and Forest Road 405 (Frey 2005a, pp. 31, 38). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 4–A are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described

in the *Unit Description* introduction section above).

Subunit 4–B; Upper Rio Peñasco

Subunit 4–B consists of 136 ha (335 ac) along 6.4 km (4.0 mi) of the Rio Peñasco on private lands and areas owned by the Forest Service. This subunit begins at the junction of Forest Service Road 164 and New Mexico Highway 6563 and follows the Rio Peñasco drainage downstream to about 2.4 km (1.5 mi) below Bluff Spring at the boundary of private and Forest Service lands.

Although much of the habitat was historically occupied with individuals detected as recently as 1988 (Morrison 1989, pp. 7–10, Frey 2005a, pp. 30–31), no New Mexico meadow jumping mice were captured during surveys in 2005 (Frey 2005a, pp. 19–20, 32–34). The entire subunit is considered unoccupied at the time of listing. All of the areas within the Subunit 4–B are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 4–C; Middle Rio Peñasco

Subunit 4–C consists of 264 ha (652 ac) along 11.4 km (7.1 mi) of the Rio Peñasco on private lands and areas owned by the Forest Service. This subunit begins at the junction of Wills Canyon and Forest Service Road 169 and follows the Rio Peñasco drainage downstream to the junction of Forest Road 212.

Based upon the capture of two New Mexico meadow jumping mice in 2012, following the cessation of grazing for 2 years, (Forest Service 2012h, pp. 2–4; Service 2012d; U.S. Army Corps of Engineers 2012, entire; 2012a, entire), approximately 0.3 ha (0.75 ac) within this unit on Forest Service lands in New Mexico are considered occupied at the time of listing. The occupied area is located within a wetland at the junction of Cox Canyon and the Rio Peñasco (Forest Service 2012h, pp. 2–4). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 4–C are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 4–D; Wills Canyon

Subunit 4–D consists of 111 ha (275 ac) along 5.6 km (3.5 mi) of streams on private lands and areas owned by the Forest Service. This subunit begins at upper Mauldin Spring, the head of the Wills Canyon, and follows the drainage downstream along Forest Service Road 169 to the boundary of Forest Service and private lands in the vicinity of Bear Spring.

Based upon the capture of one New Mexico meadow jumping mouse in 2012 (Forest Service 2012b, entire; 2012c, entire; 2012h, pp. 2–5), approximately 0.8 ha (1.9 ac) within this unit on Forest Service lands in New Mexico are considered occupied at the time of listing. The occupied area is located within a grazing exclosure at Lower Mauldin Spring in Wills Canyon (Forest Service 2012h, pp. 2–5). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 4–D are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 4–E; Agua Chiquita Canyon

Subunit 4–E consists of 161 ha (398 ac) along 7.7 km (4.8 mi) of Agua Chiquita Creek on areas owned by the Forest Service. This subunit begins about 0.8 km (0.5 mi) upstream of the livestock exclosure around Barrel and Sand Springs along Agua Chiquita Creek and follows the canyon downstream along Forest Service Road 64 to Crisp, a Forest Service riparian pasture.

Based upon multiple captures of New Mexico meadow jumping mice since 2005 (Frey 2005a, p. 34; Forest Service 2010, entire; Service 2012d, pp. 1–2), approximately 4.9 ha (12.0 ac) within this unit on Forest Service lands in New Mexico are considered occupied at the time of listing. The occupied areas are located within two of four fenced livestock exclosures including: the exclosure surrounding Sand and Barrel Springs and the most downstream section of the second in the series of four exclosures (Frey 2005a, p. 34; Forest Service 2010, entire; Service 2012d, pp. 1–2). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied areas are centered around the two capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Subunit 4–E are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Unit 5: White Mountains

Unit 5 consists of 2,448 ha (6,047 ac) of streams within eight subunits on private lands and areas owned by the Forest Service and the State of Arizona within Greenlee and Apache Counties, Arizona. Areas proposed for critical habitat for the New Mexico meadow jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the White Mountains with the capability to support the breeding and reproduction of the species.

Subunit 5–A; Little Colorado River

Subunit 5–A consists of 478 ha (1,181 ac) along 22.6 km (14.0 mi) of the Little Colorado River on private lands and areas owned by the Forest Service. This subunit encompasses the East and West Forks of the Little Colorado River. The East Fork Segment begins 0.8 km (0.5 mi) upstream of the Phelps Research Natural Area and follows the drainage downstream about 3.2 km (2.0 mi) to the confluence of Lee Valley Creek and then runs upstream about 1.6 km (1.0 mi) to the dam of Lee Valley Reservoir. The subunit continues from the confluence of Lee Valley Creek and the East Fork, downstream to the confluence of the West Fork of the Little Colorado River, continuing to about 8.9 km (5.5 mi) upstream along the drainage to about 0.8 km (0.5 mi) past Sheep's Crossing.

Based upon multiple captures of New Mexico meadow jumping mice since 2008 (Frey 2011, p. 87; ADGF 2012a, p. 3), approximately 0.6 ha (1.5 ac) within

this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied area is within a livestock exclosure along a short 0.4-km stream reach that is 1.8 km (1.1 mi) south of Greer, below Montlure Camp ((Frey 2011, p. 87; ADGF 2012a, p. 3). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (ADGF 2012a, p. 3). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, recreation, grazing, floods, the reduction in the distribution and abundance of beaver ponds, and development. The occupied areas are centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–A are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–B; Nutrioso Creek

Subunit 5–B consists of 413 ha (1,021 ac) along 20.4 km (12.7 mi) of Nutrioso Creek on private lands and areas owned by the Forest Service. This subunit begins at the confluence of Paddy Creek about 4.8 km (3 mi) south of the town of Nutrioso and follows the drainage downstream about 16 km (10 mi) to Nelson Reservoir.

Based upon multiple captures of New Mexico meadow jumping mice since 2008 (Frey 2011, pp. 29, 35, 89, 95; ADGF 2012a, p. 3), approximately 1.9 ha (4.9 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied area is a short 1.3-km (0.8-mi) stream reach 3.9 km (2.4 mi) south of the town of Nutrioso. In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (ADGF 2012a, p. 3). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, highway reconstruction, and development. The occupied area is centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–B are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–C; San Francisco River

Subunit 5–C consists of 252 ha (622 ac) along 11.8 km (7.3 mi) of the San Francisco River and its tributary Turkey (=Talwiwi) Creek on private lands and areas owned by the Forest Service. This subunit begins about 0.6 km (0.4 mi) west of Forest Road 8854 along the San Francisco River and follows the drainage downstream about 10.5 km (6.5 mi), including a 1.3-km (0.8-mi) segment of Turkey (= Talwiwi) Creek that is south of Arizona Highway 180, then continues downstream to the headwaters of Luna Lake.

Based upon multiple captures of New Mexico meadow jumping mice since 2008 (Frey 2011, p. 97), approximately 0.9 ha (2.3 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. There are two occupied areas within this unit including: a small livestock exclosure along a 0.2-km (0.1-mi) stream reach of upper Turkey Creek at the junction of Highway 80 and Forest Road 289; and two fenced livestock exclosures along a 0.4-km (0.2-mi) stream reach at the junction of the San Francisco River and Forest Road 8854 (Frey 2011, p. 97). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 did not detect New Mexico meadow jumping mice (ADGF 2012, entire, 2012a, p. 2). However, until multiple years of surveys determine that the population has been extirpated, we consider this area within the geographical area occupied by the New Mexico meadow jumping mouse at the time of listing. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, highway reconstruction, and development. The occupied areas are centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–C are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–D; East Fork Black River

Subunit 5–D consists of 421 ha (1,040 ac) along 20.3 km (12.6 mi) of the East Fork of the Black River areas owned by the Forest Service. This subunit begins 0.8 km (0.5 mi) north of the intersection of Three Forks Road and Route 285 and follows the drainage downstream about 20.3 km (12.6 mi), where it abuts the West Fork Black River Subunit (see ''West Fork Black River Subunit'' below).

Based upon multiple captures of New Mexico meadow jumping mice since 2008 (Frey 2011, p. 97; ADGF 2012, entire, 2012a, p. 2), approximately 6.9 ha (16.9 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied area is located along the headwaters of the East Fork Black River near the intersection of Three Forks Road and Route 285 (Frey 2011, p. 97; ADGF 2012, entire, 2012a, p. 2). In 2011, the Wallow Fire burned much of this area and surveys during 2012 continued to detect New Mexico meadow jumping mice (ADGF 2012a, p. 2). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, and highway reconstruction. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–D are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–E; West Fork Black River

Subunit 5–E consists of 481 ha (1,188 ac) along 23.0 km (14.3 mi) of the West Fork of the Black River on private lands and areas owned by the Forest Service and the State of Arizona. The proposed subunit begins at the confluence of the West Fork of the Black River and Burro Creek and follows the drainage downstream where it abuts the East Fork Black River Subunit (see ''East Fork Black River Subunit'' above).

Based upon multiple captures of New Mexico meadow jumping mice since

2008 (Frey 2011, p. 97; ADGF 2012, entire, 2012a, p. 2), approximately 13.7 ha (33.9 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied areas occur at four locations: along the upper West Fork Black River just north of Forest Road 116; immediately adjacent to the campground along the middle Fork of the Black River; at the junction of Forest Road 68 and the middle Fork of the Black River; and near the junction of the lower Fork of the Black River and Home Creek (Frey 2011, p. 97; ADGF 2012, entire, 2012a, pp. 2–3). In 2011, the Wallow Fire burned much of this area and surveys during 2012 continued to detect New Mexico meadow jumping mice at the lower and middle sections of the West Fork Black River (ADGF 2012a, pp. 2–3). Although New Mexico meadow jumping mice were not detected at the upper West Fork Black River location, until multiple years of surveys determine that the population has been extirpated, we consider this area within the geographical area occupied by the New Mexico meadow jumping mouse at the time of listing. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, and highway reconstruction. The occupied areas are centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–E are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–F; Boggy Creek and Centerfire Creeks

Subunit 5–F consists of 196 ha (485 ac) along 8.9 km (5.5 mi) of Boggy Creek and Centerfire Creek on areas owned by the Forest Service. The East Segment of the subunit begins 0.8 km (0.5 mi) north of the intersection of Route 25 and Boggy Creek and follows the drainage downstream to the confluence with Centerfire Creek. The West segment begins 0.8 km (0.5 mi) north of the intersection of Route 25 and Centerfire Creek and follows the drainage downstream to the confluence with Boggy Creek, then continues downstream to the confluence with the Black River.

Based upon multiple captures of New Mexico meadow jumping mice since 2008 (Frey 2011, pp. 104–105; ADGF 2012, entire, 2012, p. 3), approximately 3.0 ha (7.5 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied areas are located within fenced livestock exclosures at the junction of Forest Road 25 and Boggy Creek; and within a fenced livestock exclosure at the junction of Forest Road 25 and Centerfire Creek (Frey 2011, pp. 104–105; ADGF 2012, entire, 2012, p. 3). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (ADGF 2012a, p. 3). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied areas are centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–F are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–G; Corduroy Creek

Subunit 5–G consists of 104 ha (256 ac) along 4.8 km (3.0 mi) of Corduroy Creek on lands owned by the Forest Service. The proposed subunit begins at the headwaters about 0.8 km (0.5 mi) south of the intersection of County Road 24 and County Road 8184A and follows the drainage downstream to the confluence with Fish Creek.

Based upon multiple captures of New Mexico meadow jumping mice since 2009 (Frey 2011, pp. 104–105; ADGF 2012, entire, 2012a, p. 4), approximately 0.4 ha (1.1 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied area is located within fenced livestock exclosures at the junction of Forest Road 8184A and Corduroy Creek (Frey 2011, pp. 104–105; ADGF 2012, entire, 2012a, p. 4). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (ADGF 2012a, p. 4). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–G are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Subunit 5–H; Campbell Blue Creek

Subunit 5–H consists of 102 ha (253 ac) along 4.8 km (3.0 mi) of Campbell Blue Creek on private lands and areas owned by the Forest Service. The proposed subunit begins at the confluence with Cat Creek along Forest Road 281 and extends downstream to the confluence with Turkey Creek.

Based upon multiple captures of New Mexico meadow jumping mice since 2008 (Frey 2011, p. 101), approximately 0.008 ha (0.02 ac) within this unit on Forest Service lands in Arizona are considered occupied at the time of listing. The occupied area is located within a livestock exclosure 13 km (8 mi) north of the community of Blue (Frey 2011, p. 101). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 did not detect New Mexico meadow jumping mice (ADGF 2012, entire, 2012a, p. 2). However, until multiple years of surveys determine that the population has been extirpated, we consider this area within the geographical area occupied by the New Mexico meadow jumping mouse at the time of listing. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 5–H are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described

in the *Unit Description* introduction section above).

Unit 6: Middle Rio Grande

Unit 5 consists of 294 ha (727 ac) of streams, ditches, and canals within three subunits of streams on lands owned by Isleta Pueblo, Bernalillo County; Ohkay Owingeh, Rio Arriba County; and the Service's Bosque del Apache NWR, Socorro County, New Mexico. Areas proposed for critical habitat for the New Mexico meadow jumping mouse in this unit incorporate the only habitat believed to be occupied (Bosque del Apache NWR) by the subspecies within the middle Rio Grande with the capability to support the breeding and reproduction of the species.

Because Bosque del Apache NWR is the only locality within the middle Rio Grande considered still in existence (Frey and Wright 2012), we do not believe one population is sufficient to provide for the conservation of the species. A designation limited to the range that we consider occupied by the species within the middle Rio Grande would be inadequate to recover the species within the unit. We have determined additional subunits are essential to the conservation of the species because, if necessary, these additional areas have the potential to provide for the reintroduction and reestablishment of New Mexico meadow jumping mouse to support recovery. As such, we are proposing two additional subunits that were historically occupied, but where presence of the New Mexico meadow jumping mouse is currently unknown.

Subunit 6–A; Isleta Pueblo

Subunit 6–A consists of 43 ha (105 ac) along 3.7 km (2.3 mi) of ditches, canals, and marshes on lands owned by Isleta Pueblo. There are two segments within this subunit. One segment begins at the confluence of the Isleta Return Channel and the Rio Grande and extends north about 0.5 km (0.3 mi), then heads west about 30 m (100 ft), and finally heads south about 1.6 km (1 mi) to the end of Isleta Marsh paralleling New Mexico Highway 314. The other segment begins about 0.8 km (0.5 mi) south of Highway 25 and extends about 1.6 km (1.0 mi) along the marsh where it terminates at the railroad crossing, just west of the Rio Grande.

Much of the habitat was historically occupied with individuals detected as recently as 1988 (Morrison 1988, pp. 22–27; Frey 2006c, entire); however, no New Mexico meadow jumping mice surveys have been conducted recently. The entire subunit is considered unoccupied at the time of listing. All of the areas within Subunit 6–A are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

We will also consider our partnership with this Tribe and evaluate the conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see ''Exclusions'' below).

Subunit 6–B; Ohkay Owingeh

Subunit 6–B consists of 51 ha (125 ac) along 4.8 km (3.0 mi) of ditches, canals, and marshes on lands owned by Ohkay Owingeh. There are two segments within this subunit. The first segment begins at the junction of New Mexico Highway 291 and immediately west of the middle Rio Grande, generally follows riparian areas, and terminates about 0.6 km (0.4 mi) southeast of Guique, New Mexico. The second segment begins near San Juan Lakes, east of the Rio Grande 0.08 km (0.05 mi) east of Fishpond Road and extends about 0.4 km (0.25 mi) southeast where it heads northwest about 0.9 km (0.6 mi) through a series of ponds and marshes, paralleling the eastern edge of the fishing pond. Much of the habitat was historically occupied with individuals detected as recently as 1988 (Morrison 1988, pp. 28–35, Frey 2006c, entire); however, no New Mexico meadow jumping mice were captured during surveys conducted recently (Morrison 2012, entire). The entire subunit is considered unoccupied at the time of listing. All of the areas within Subunit 6–B are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

We will also consider our partnership with this Tribe and evaluate the conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see ''Exclusions'').

Subunit 6–C; Bosque del Apache National Wildlife Refuge

Subunit 6–C consists of 201 ha (496 ac) along 29.6 km (18.5 mi) of ditches and canals on areas owned by the Service. This subunit includes parts of a complex ditch system with associated irrigation of Refuge management units, making habitat within this area unique. This subunit begins in the northern part of the refuge and generally follows the Riverside Canal to the southern end, including a 4.8-km (3.0-mi) segment of Socorro-San Antonio Main Canal.

Based upon multiple captures of the New Mexico meadow jumping mouse since 2009 (Frey and Wright 2012, entire), approximately 4.1 ha (10.1 ac) within this unit on Service lands in New Mexico are considered occupied at the time of listing. The occupied area is located along a 2.7-km (1.7-mi) segment of the Riverside Canal (Frey and Wright 2012, entire). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: water use and management, severe wildland fires, and thinning, mowing, or removing tamarisk (also known as saltcedar, *Tamarix ramosissima*), decadent stands of willow that are greater than 3 years old or 1.5 meters (4.9 feet) tall. The occupied area is centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Subunit 6–C are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Unit 7: Florida River

Unit 7 consists of 256 ha (634 ac) along 13.6 km (8.4 mi) of the Florida River on private lands and an area owned by the Bureau of Land Management, La Plata County, Colorado. The unit begins at the irrigation diversion structure (Florida Ditch main headgate) of the Florida Water Conservancy District about 0.8 km (0.5 mi) northeast of the intersection of La Plata County Road 234 and 237 and follows the drainage downstream to about 0.16 km (0.1 mi) north of Ranchos Florida Road.

Based upon the capture of two New Mexico meadow jumping mice since 2007 (Museum of Southwestern Biology 2007; 2007a; Frey 2008c, pp. 42–45, 56; 2011a, pp. 19, 33), approximately 0.15 ha (0.37 ac) within this unit on private lands in Colorado are considered occupied at the time of listing. The occupied area is located 0.9 km (0.6 mi) north of Highway 160 along the Florida River (Museum of Southwestern Biology 2007; 2007a; Frey 2008c, pp. 42–45, 56; 2011a, pp. 19, 33). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: floods, water use and management, development, and coalbed methane. The occupied area is centered around the capture location

plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Unit 7 are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Unit 8: Sambrito Creek

Unit 8 consists of 75 ha (184 ac) along 4.6 km (2.9 mi) of Sambrito Creek on private lands and areas owned by the State of Colorado within Navajo State Park, near Arboles, Archuleta County, Colorado. There are two segments within this unit. One segment begins at Archuleta County Road 977, following Sambrito Creek downstream to the headwaters of Navajo Reservoir. The second segment starts about 0.3 km (0.2 mi) west of the intersection of Colorado Road 977 and 988 and follows the drainage about 3.9 km (2.1 mi) through the Sambrito Wetlands Area downstream about to the headwaters of Navajo Reservoir.

Based upon multiple captures of New Mexico meadow jumping mice in 2012 (Colorado Parks and Wildlife 2012, entire), approximately 0.9 ha (2.3 ac) within this unit on State of Colorado lands are considered occupied at the time of listing. The occupied area is located immediately south of Archuleta County Road 977 along the unnamed drainage through the Sambrito Wetlands Areas about 1.8 km (1.1 mi) due west of Sambrito Creek (Colorado Parks and Wildlife 2012, entire). The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: floods, grazing, water use and management, the reduction in the distribution and abundance of beaver ponds, development, recreation, and coalbed methane. The occupied area is centered around the capture location that is about 0.5 km (0.3 mi) south of Archuleta County Road 977 plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features are found. The remaining unoccupied areas within Unit 8 are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the New Mexico meadow jumping mouse (as described in the *Unit Description* introduction section above).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical

habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the New Mexico meadow jumping mouse. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the New Mexico meadow jumping mouse. These activities include, but are not limited to:

(1) Any activity that destroys, modifies, alters, or removes the herbaceous riparian vegetation that comprises the species' habitat, as described in this proposed rule or within the May 2013 SSA Report, especially if these activities occur during the New Mexico meadow jumping mouse's active season. Such activities could include, but are not limited to: Domestic livestock grazing; land clearing or mowing; activities associated with construction for roads, bridges, pipelines, or bank stabilization; residential or commercial development; channel alteration; timber harvest; prescribed fires; off-road vehicle activity; recreational use; the removal of beaver (excluding irrigation ditches and canals); and other alterations of watersheds and floodplains. These activities may affect the physical or biological features of critical habitat for the New Mexico meadow jumping mouse, by removing sources of food, shelter, nesting or hibernation sites, or otherwise impacting habitat essential for completion of its life history.

(2) Any activity that results in changes in the hydrology of the unit, including modification to any stream or water body that results in the removal or destruction of herbaceous riparian vegetation in any stream or water body. Such activities that could cause these effects include, but are not limited to, water diversions, groundwater pumping, watershed degradation, construction or destruction of dams or impoundments, developments or 'improvements' at a spring, channelization, dredging, road and bridge construction, destruction of riparian or wetland vegetation, and other activities resulting in the draining or inundation of a unit.

(3) Any activity (e.g., instream dredging, impoundment, water diversion or withdrawal, channelization, discharge of fill material) that detrimentally alters natural processes in a unit, including changes to inputs of water, sediment, and nutrients, or any activity that significantly and detrimentally alters water quantity in the unit.

(4) Any activity that could lead to the introduction, expansion, or increased density of an exotic plant or animal species that is detrimental to the New Mexico meadow jumping mouse and to its habitat.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs of the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the proposed critical habitat designation for the New Mexico meadow jumping mouse; therefore, we do not anticipate exempting any areas under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. Potential land use sectors that

may be affected by New Mexico meadow jumping mouse critical habitat designation include domestic livestock grazing, activities associated with construction or improvement of roads, bridges, pipelines, or bank stabilization; residential or commercial development; recreation; prescribed burns; and irrigation water use and management.

During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) or lands where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the New Mexico meadow jumping mouse are not owned or managed by the DOD. Currently, there are no areas proposed for exclusion based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at Tribal management in recognition of their capability to appropriately manage their own resources, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

In preparing this proposal, we have determined that there are currently no HCPs for the New Mexico meadow jumping mouse. As detailed above, the proposed designation includes areas within two Native American Pueblos that are considered unoccupied by New Mexico meadow jumping mice, but are essential for the conservation of the species. Therefore, we have proposed designation of critical habitat for the New Mexico meadow jumping mouse on tribal lands. We have begun government-to-government consultation with these tribes, and will continue to do so throughout the public comment period and during development of the final designation of critical habitat for the New Mexico meadow jumping mouse. We will consider these areas for exclusion from the final critical habitat designation to the extent consistent with the requirements of section 4(b)(2) of the Act. At this time, we are not proposing the exclusion of any Tribal areas in this proposed critical habitat designation. However, we specifically solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we identify lands that we are considering for exclusion under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

Ohkay Owingeh (San Juan Pueblo) and Isleta Pueblo contain segments of the Rio Grande in Rio Arriba and Bernalillo Counties, New Mexico, respectively, which are essential to the conservation of the New Mexico meadow jumping mouse. These river segments occur within the proposed Rio Grande Critical Habitat Unit. We sent notification letters in November 2011 to both Tribes describing our listing process. We will coordinate with these Tribes and examine what New Mexico meadow jumping mouse conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of New Mexico meadow jumping mouse habitat.

Isleta Pueblo

Isleta Pueblo contains proposed New Mexico meadow jumping mouse critical habitat along the Rio Grande within Bernalillo County, New Mexico. The Isleta Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve riparian vegetation, including not allowing cattle to graze within the bosque (riparian areas) and protecting riparian habitat from fire, maintaining native vegetation, and preventing habitat fragmentation (Service 2005; 70 FR 60955; Pueblo of Isleta 2005, entire). Because of the voluntary measures undertaken, we will consider excluding Isleta Pueblo lands from the final designation of New Mexico meadow jumping mouse critical habitat under section 4(b)(2) of the Act.

Ohkay Owingeh (San Juan Pueblo)

Ohkay Owingeh contains proposed New Mexico meadow jumping mouse critical habitat along the Rio Grande within Rio Arriba County, New Mexico. The Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the New Mexico meadow jumping mouse and its habitat on their lands. The Pueblo has engaged in riparian vegetation and wetland improvement projects, while managing to reduce the occurrence of wildfire due to the abundance of exotic flammable riparian vegetation, including using Tribal Wildlife Grants in both 2004 and 2006 to restore riparian and wetland habitat to benefit the Southwestern willow flycatcher (*Empidonax traillii extimus*), bald eagle (*Haliaeetus leucocephalus*), and other riparian species on 36.4 ha (90 ac) of the Rio Grande (Service 2007a, p. 42; Service 2005, 70 FR 60963). Funding for another 10.9 ha (27 ac) of riparian and wetland restoration was provided in 2007 (Service 2012f, p. 12). The Pueblo received an additional Tribal Wildlife Grant in 2011 to conduct surveys and restore habitat for the New Mexico meadow New Mexico meadow jumping mouse (Service 2012f, p. 12). The long-term goal of the Pueblo's riparian management is to implement innovative restoration techniques, decrease fire hazards by restoring native vegetation, share information with other restoration practitioners, utilize restoration projects in the education of the Tribal community and surrounding community, and provide a working and training environment for the people of the Pueblo. Because of the voluntary measures undertaken, we will consider excluding Ohkay Owingeh (San Juan Pueblo) lands from the final designation of New Mexico meadow jumping mouse critical habitat under section 4(b)(2) of the Act.

A final determination on whether the Secretary will exercise his discretion to exclude any of these areas from critical habitat for the New Mexico meadow jumping mouse will be made when we publish the final rule designating critical habitat. We will take into

account public comments and carefully weigh the benefits of exclusion versus inclusion of these areas. We may also consider areas not identified above for exclusion from the final critical habitat designation based on information we may receive during the preparation of the final rule (e.g., management plans for additional areas).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. 12866 regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of

critical habitat will only directly regulate Federal agencies which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. A small portion of an existing gas pipeline is within proposed critical habitat; however, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We lack the available economic information to determine if a Small Government Agency Plan is required. Therefore, we defer this finding until completion of the draft economic analysis is prepared under section 4(b)(2) of the Act.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we will analyze the potential takings implications of designating critical habitat for the New Mexico meadow jumping mouse in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. We have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies. The designation of critical habitat in geographic areas currently occupied by the New Mexico meadow jumping mouse imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the

rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the New Mexico meadow jumping mouse, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

There are tribal lands in New Mexico included in this proposed designation of critical habitat that are unoccupied by the species at the time of listing that are essential for the conservation of the New Mexico meadow jumping mouse. We have begun government-to-government consultation with these tribes. We will consider these areas for exclusion from the final critical habitat designation to the extent consistent with the requirements of section 4(b)(2) of the Act. Isleta Pueblo and Ohkay Owingeh are the main tribes affected by this proposed rule. We sent notification letters in November 2011 to both tribes describing the listing process. We will coordinate with these tribes and examine what New Mexico meadow jumping mouse conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of New Mexico meadow jumping mouse habitat. We will schedule meetings with these tribes and any other interested tribes shortly after publication of this proposed rule so that we can give them as much time as possible to comment.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov,* in the May 2013 version of the New Mexico Meadow Jumping Mouse Species Status Assessment Report (Service 2013), and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544;. 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Mouse, New Mexico meadow jumping'' in alphabetical order under Mammals to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Mouse, New Mexico meadow jumping.	Zapus hudsonius luteus.	U.S. (AZ, CO, NM)	U.S. (AZ, CO, NM)	E	.....	17.95(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (a) by adding an entry for ''New Mexico Meadow Jumping Mouse (*Zapus hudsonius luteus*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(a) *Mammals.*

* * * * *

New Mexico Meadow Jumping Mouse (*Zapus hudsonius luteus*)

(1) Critical habitat units are depicted for Bernalillo, Colfax, Mora, Otero, Rio Arriba, Sandoval, and Socorro Counties, in New Mexico; Las Animas, Archuleta, and La Plata Counties, Colorado; and Greenlee and Apache Counties, Arizona on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the New Mexico meadow jumping mouse consist of the following:

(i) Riparian communities along rivers and streams, springs and wetlands, or canals and ditches characterized by one of two wetland vegetation community types:

(A) Persistent emergent herbaceous wetlands dominated by beaked sedge (*Carex rostrata*) or reed canarygrass (*Phalaris arundinacea*) alliances; or

(B) Scrub-shrub riparian areas that are dominated by willows (*Salix* spp.) or alders (*Alnus* spp.); and

(ii) Flowing water that provides saturated soils throughout the New Mexico meadow jumping mouse's active season that supports tall (average stubble height of herbaceous vegetation of at least 69 cm (27 inches) and dense herbaceous riparian vegetation (cover averaging at least 61 vertical cm (24 inches)) composed primarily of sedges (*Carex* spp. or *Schoenoplectus pungens*) and forbs, including, but not limited to one or more of the following associated species: spikerush (*Eleocharis macrostachya*), beaked sedge (*Carex rostrata*), reed canarygrass (*Phalaris arundinacea*), rushes (*Juncus* spp. and *Scirpus* spp.), and numerous species of grasses such as bluegrass (*Poa* spp.), slender wheatgrass (*Elymus trachycaulus*), brome (*Bromus* spp.), foxtail barley (*Hordeum jubatum*), or Japanese brome (*Bromus japonicas*), and forbs such as water hemlock (*Circuta douglasii*), field mint (*Mentha arvense*), asters (*Aster* spp.), or cutleaf coneflower (*Rudbeckia laciniata*); and

(iii) Sufficient areas of 9 to 24 km (5.6 to 15 mi) along a stream, ditch, or canal that contain suitable or restorable habitat to support movements of individual New Mexico meadow jumping mice; and

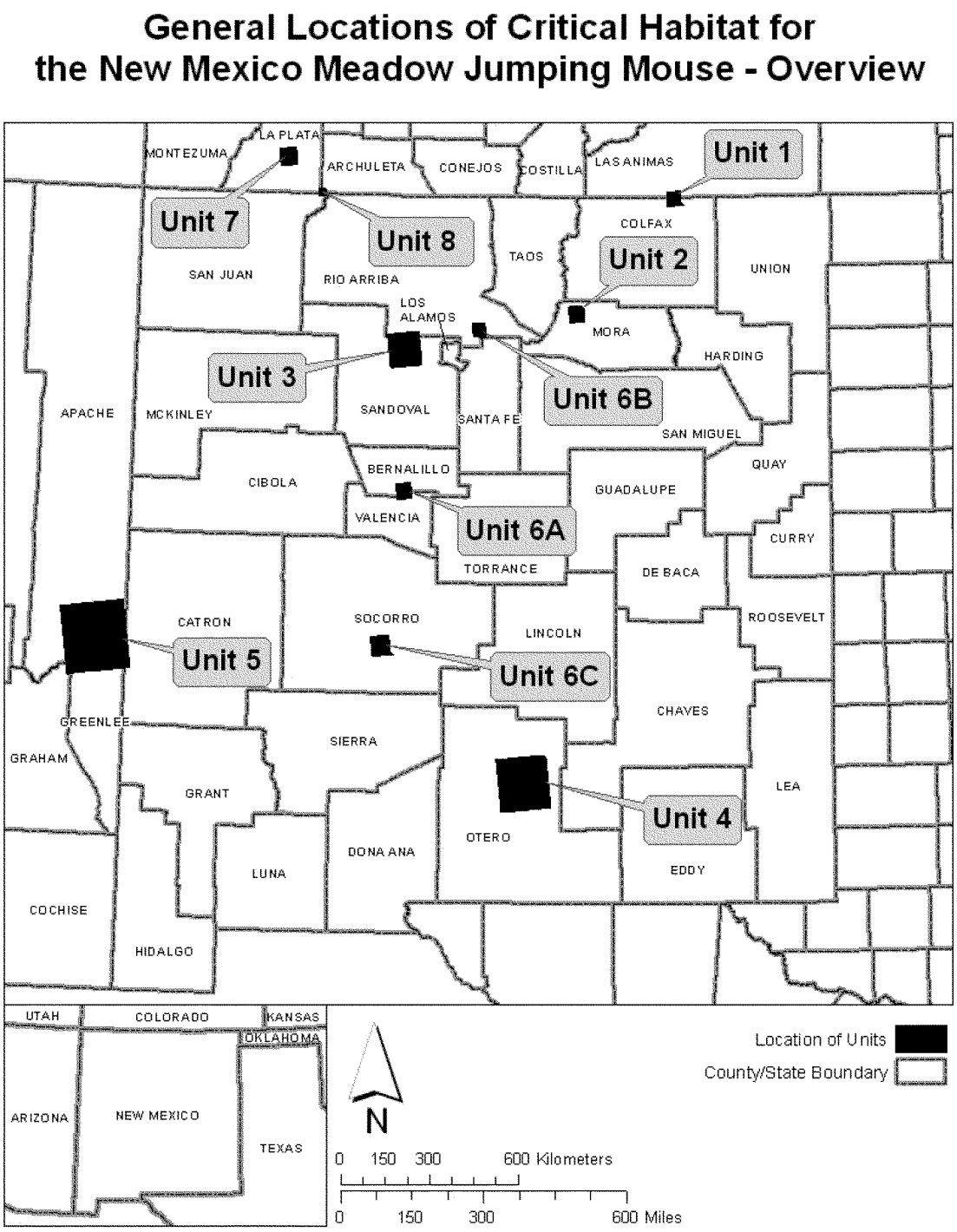
(iv) Include adjacent floodplain and upland areas extending approximately 100 m (330 ft) outward from the water's edge (as defined by the bankfull stage of streams).

(3) Critical habitat does not include manmade structures (such as buildings, fire lookout stations, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

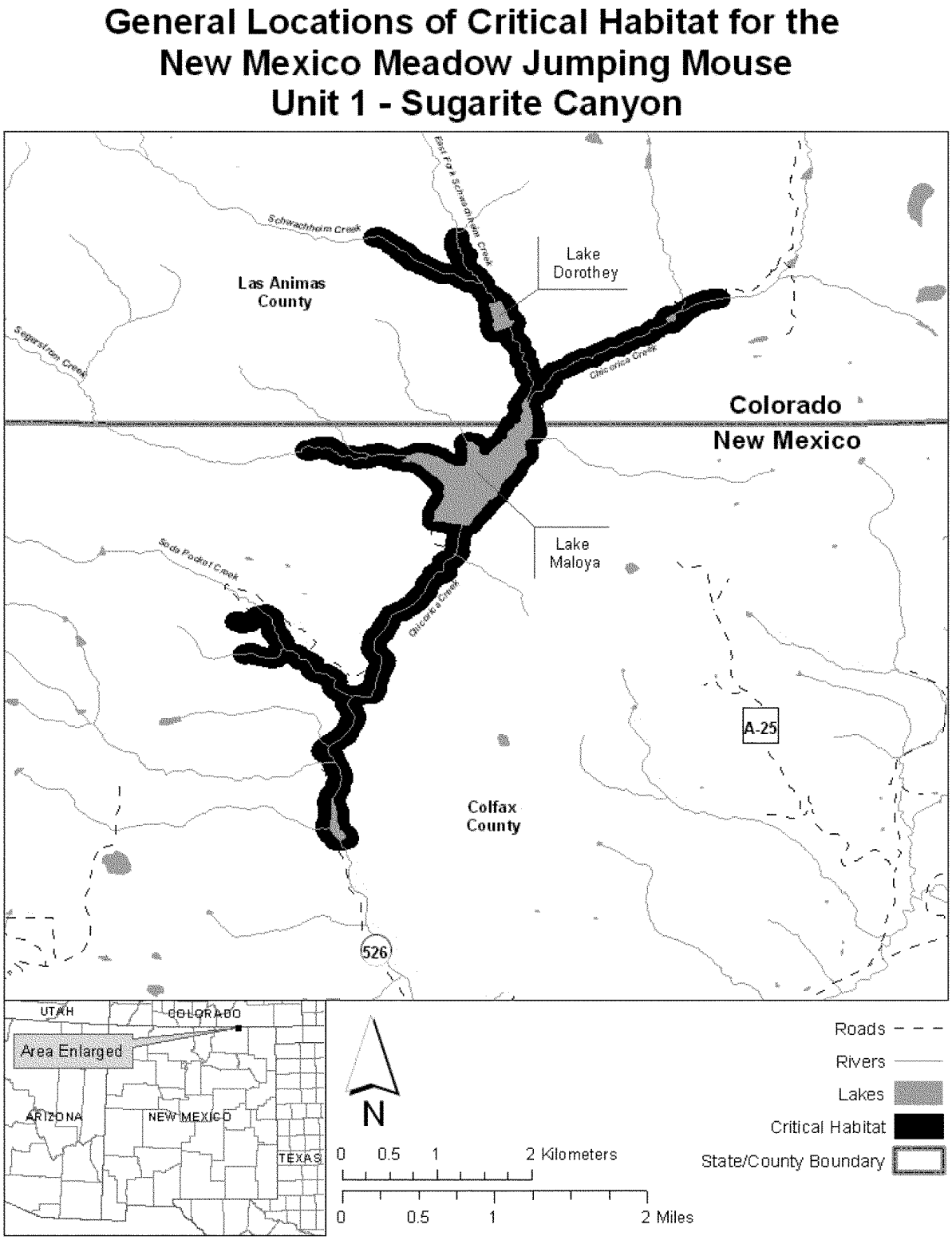
(4) *Critical habitat map units.* Units were mapped using the USA Contiguous Albers Equal Area Conic USGS version projection. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site (*http://www.fws.gov/southwest/es/NewMexico/*), at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0014, and at the New Mexico Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat for the New Mexico meadow jumping mouse follows:

BILLING CODE 4310–55–P

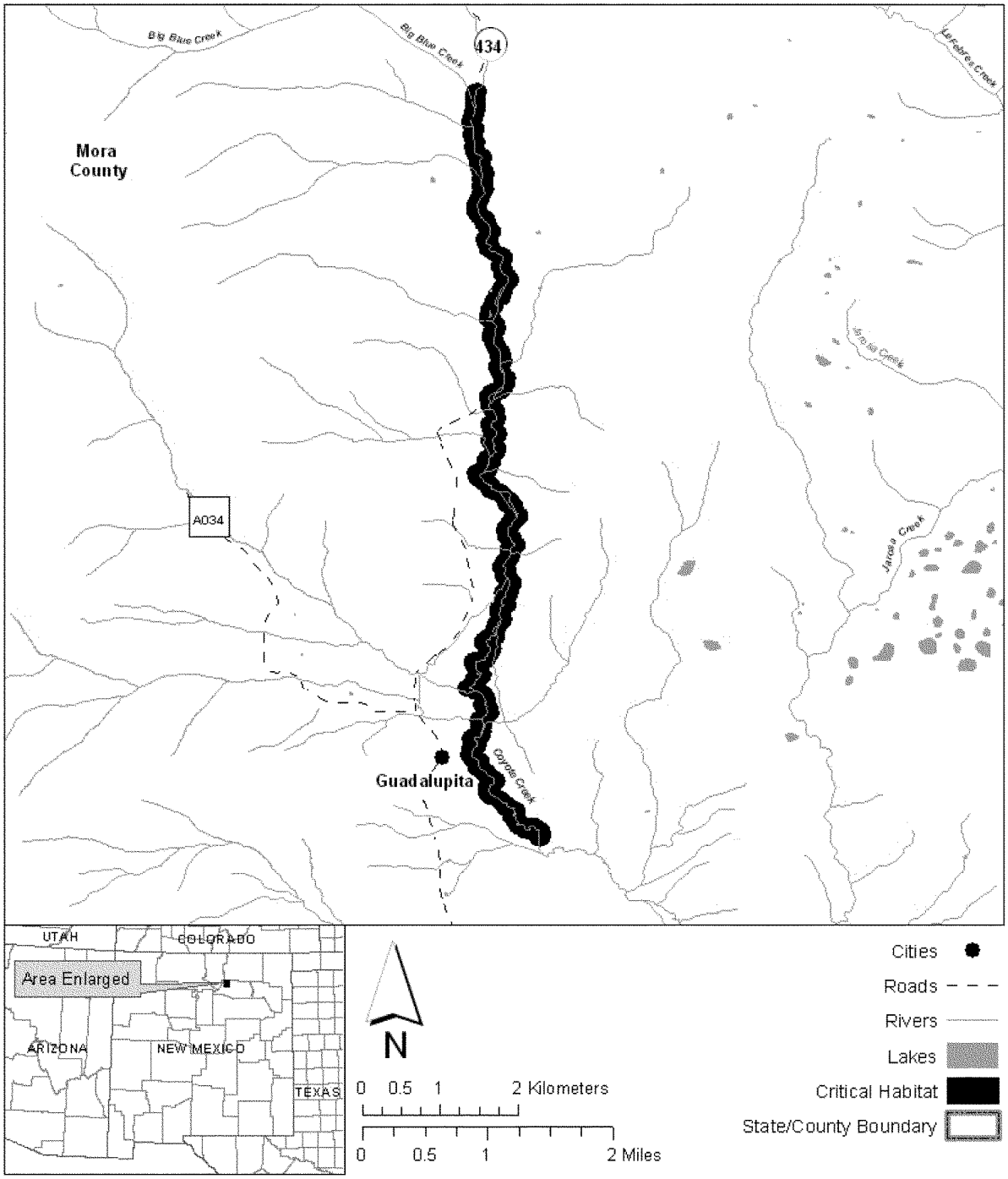


(6) Unit—Sugarite Canyon, New Mexico and Colorado, Map of Unit 1, follows:

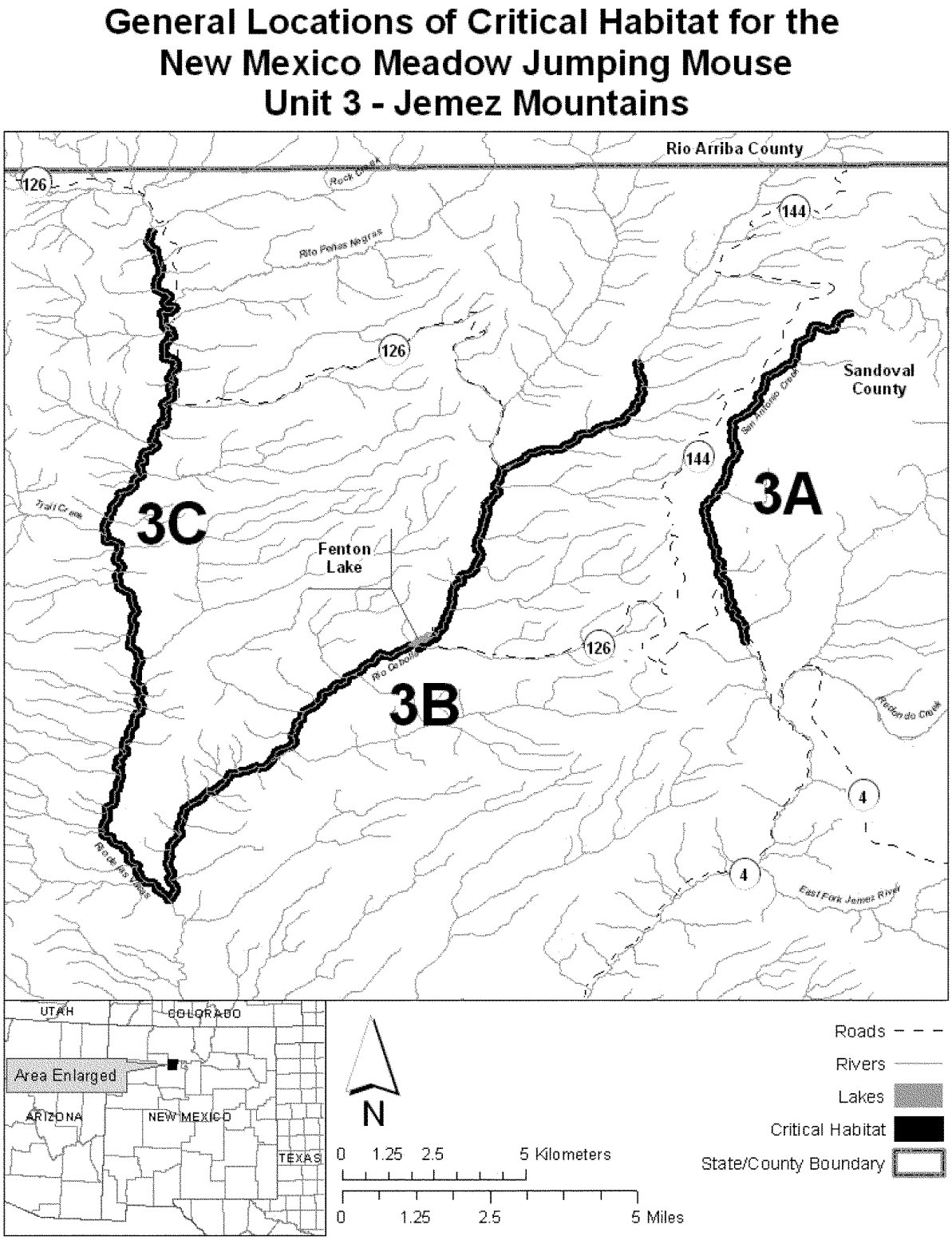


(7) Unit 2—Coyote Creek, New Mexico. Map of Unit 2, follows:

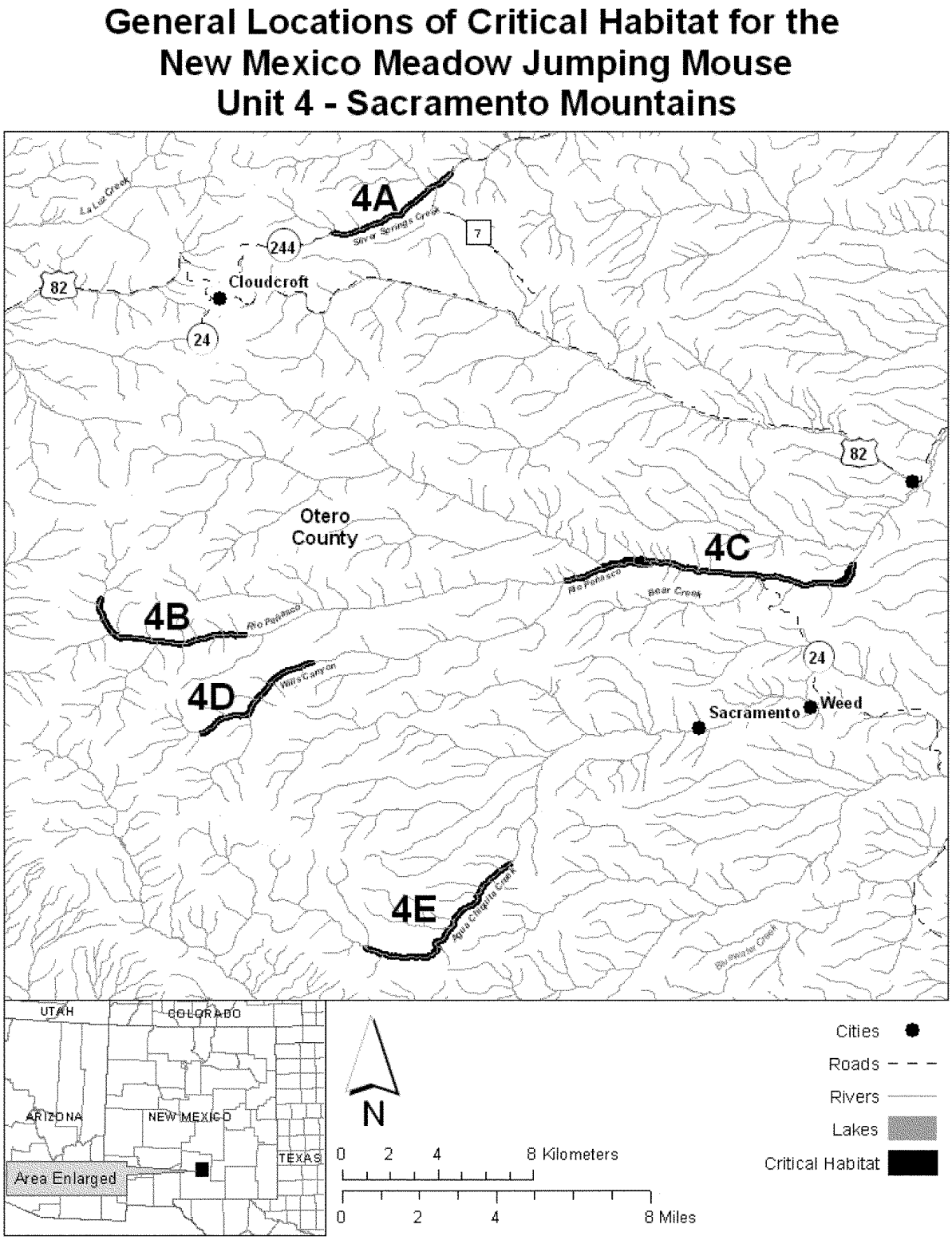
General Locations of Critical Habitat for the New Mexico Meadow Jumping Mouse Unit 2 - Coyote Creek



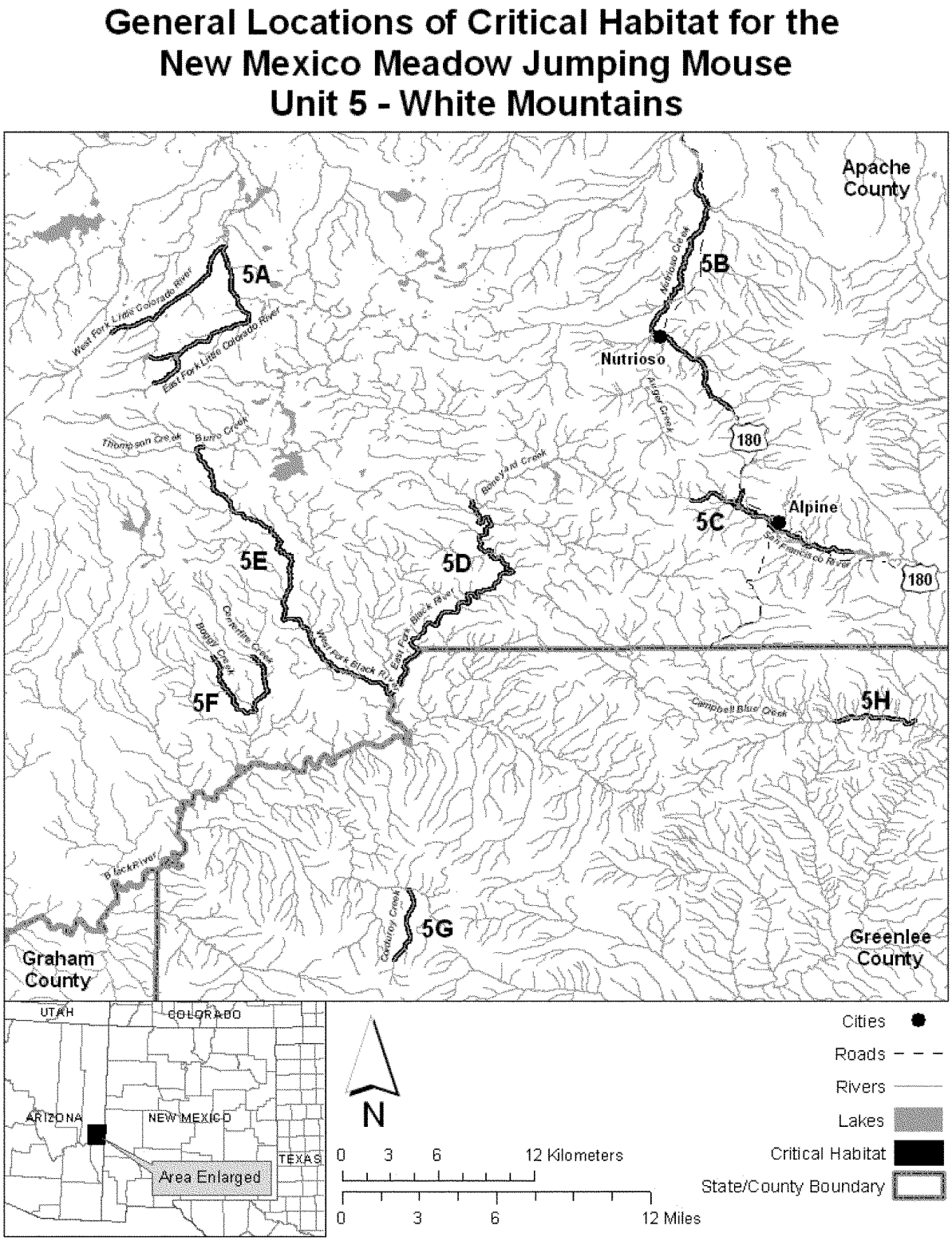
(8) Unit 3—Jemez Mountains, New Mexico. Map of Unit 3, follows:



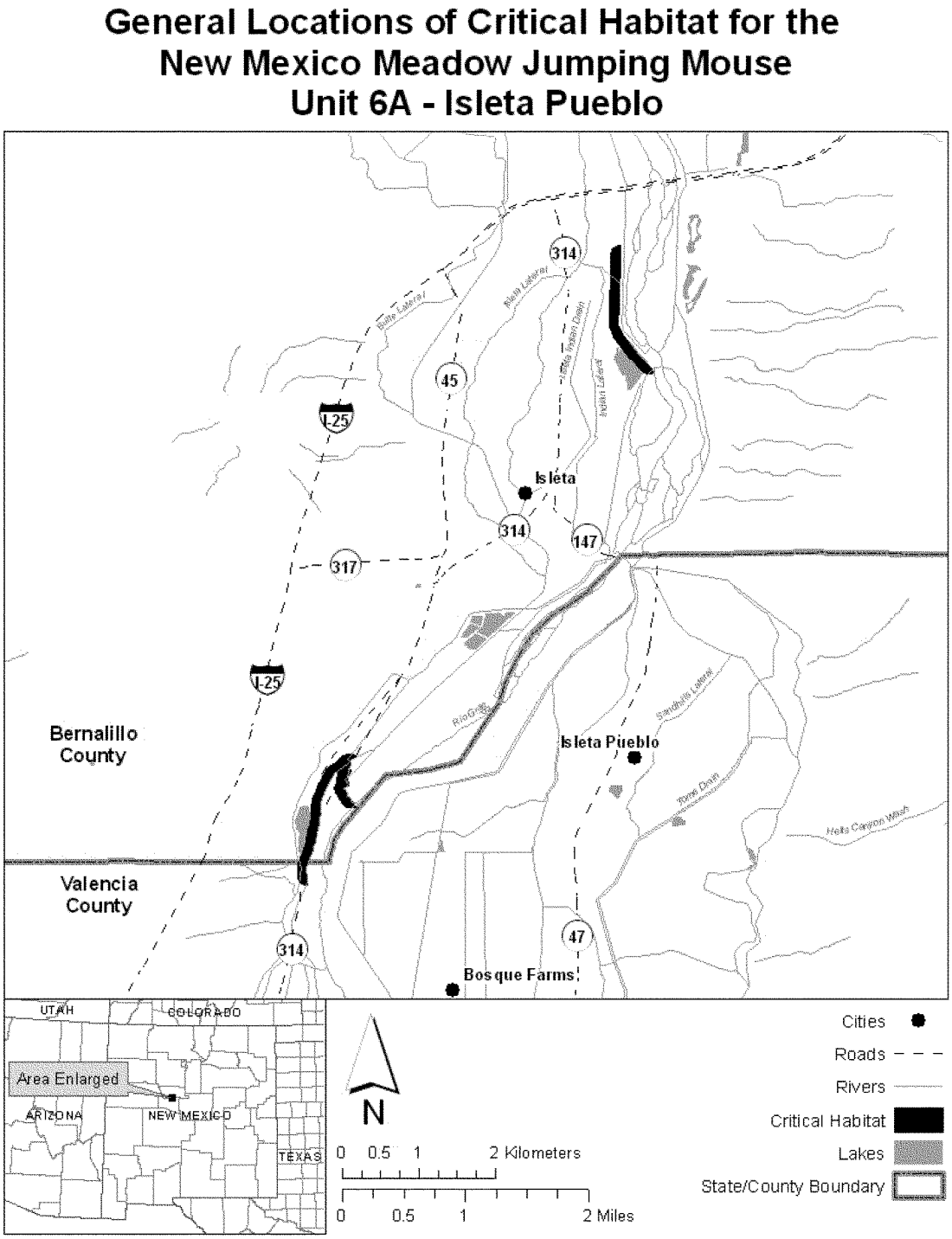
(9) Unit 4—Sacramento Mountains, New Mexico. Map of Unit 4, follows:



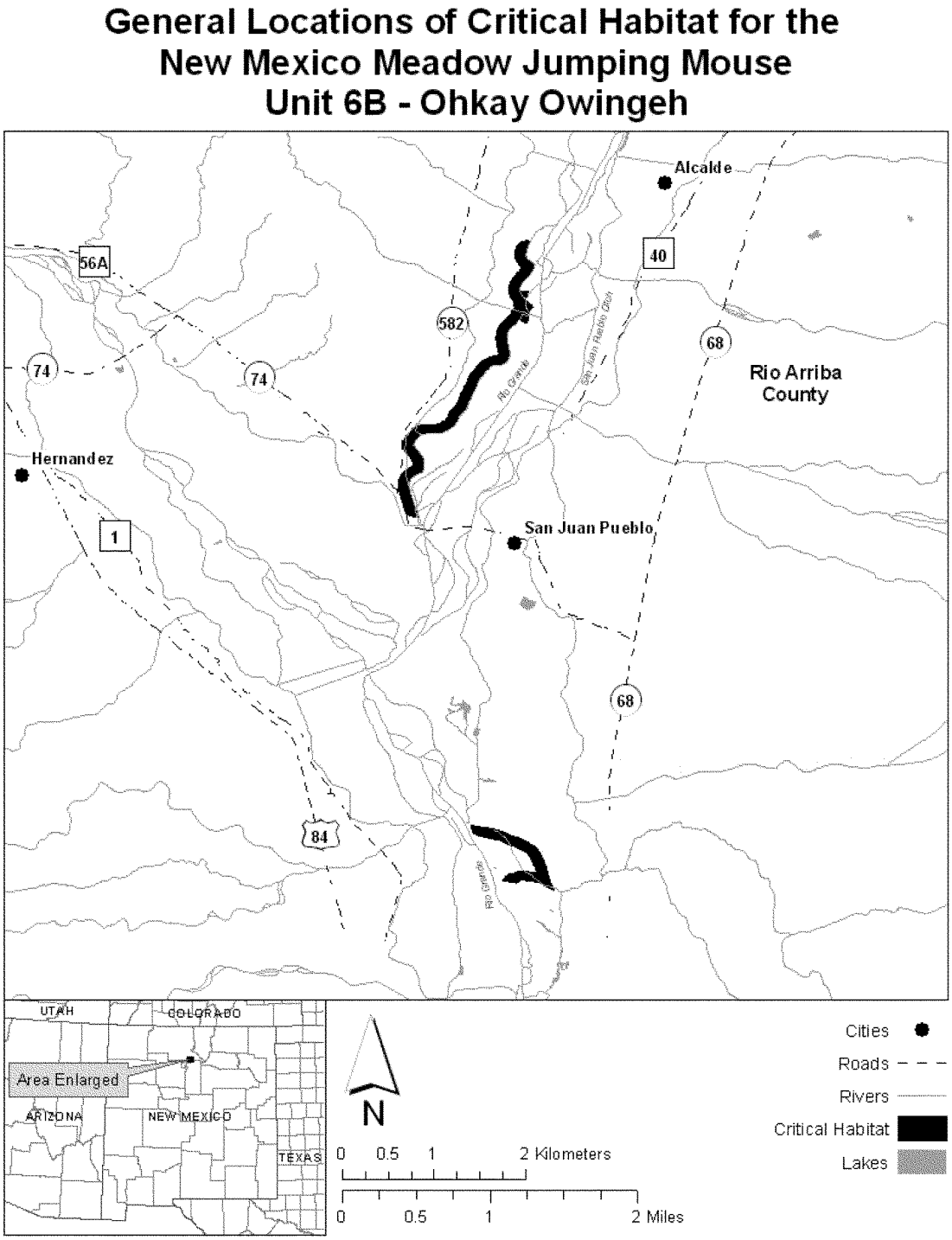
(10) Unit 5—White Mountains, Arizona. Map of Unit 5, follows:



(11) Unit 6—Middle Rio Grande, Subunit 6A, Isleta Pueblo, New Mexico. Map of Unit 6, Subunit 6A, follows:

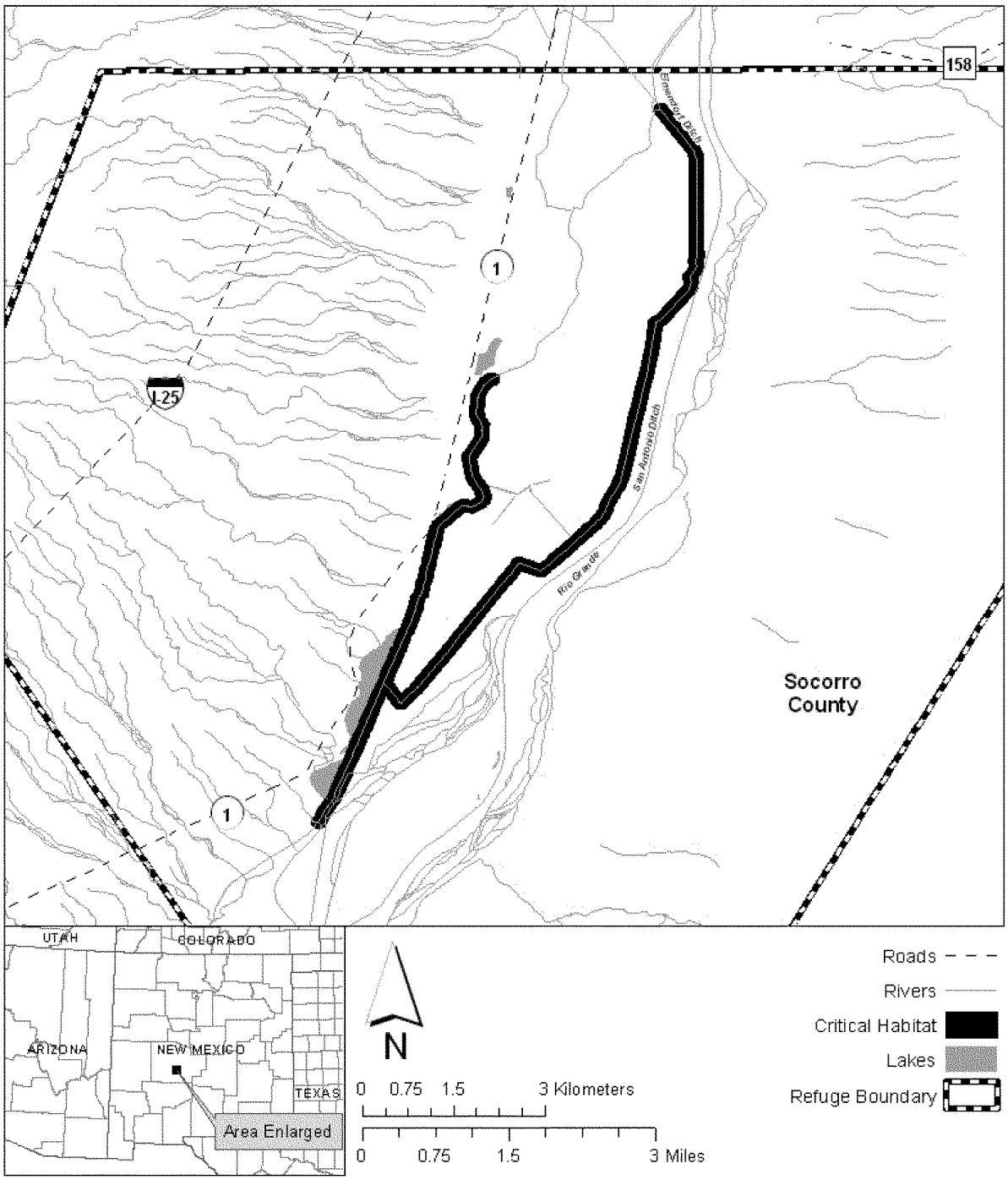


(12) Unit 6—Middle Rio Grande, Subunit 6B, Ohkay Owingeh, New Mexico. Map of Unit 6, Subunit 6B, follows:

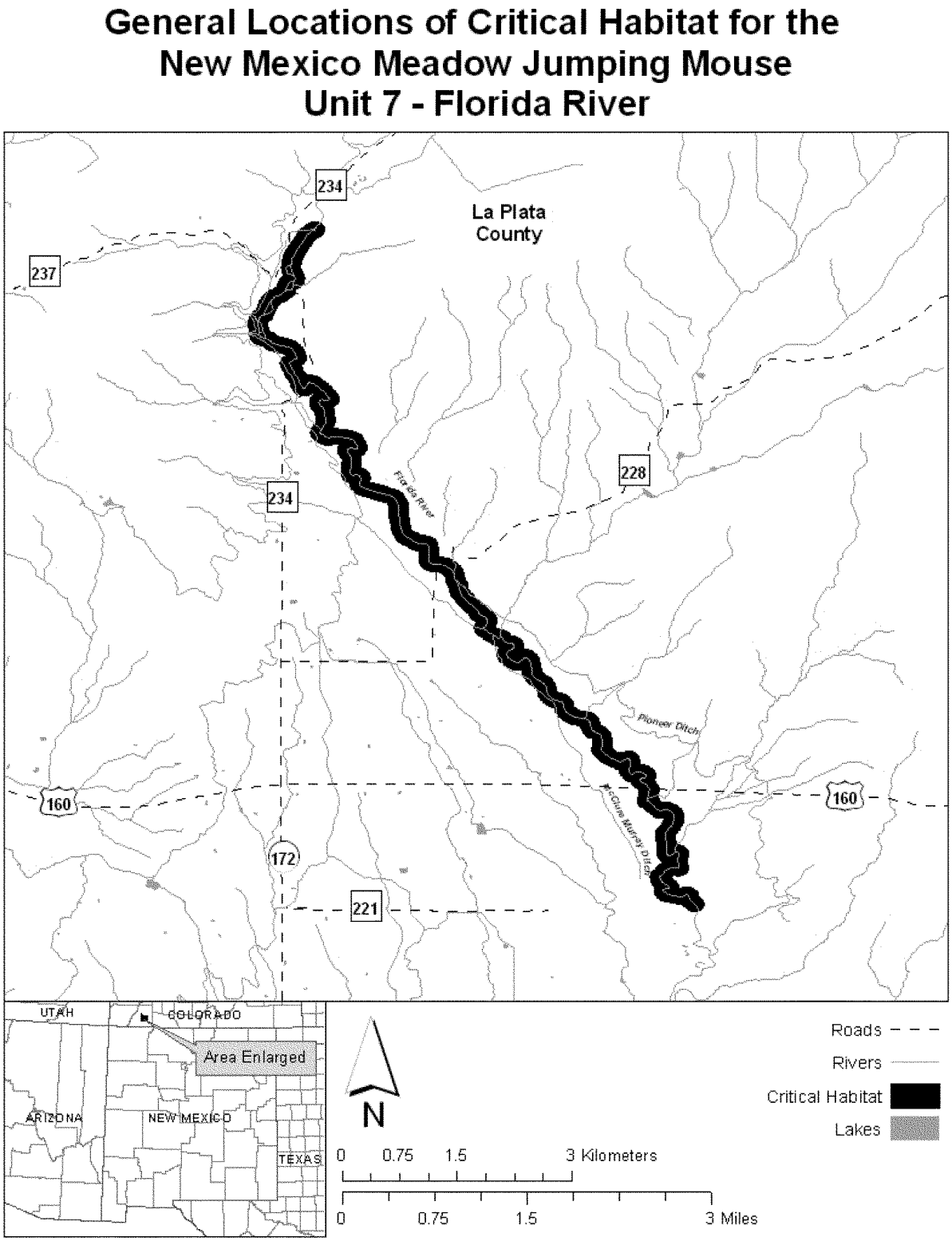


(13) Unit 6—Middle Rio Grande, Subunit 6–C, Bosque del Apache NWR, New Mexico. Map of Unit 6, Subunit 6–C, follows:

General Locations of Critical Habitat for the New Mexico Meadow Jumping Mouse Unit 6C - Bosque del Apache NWR

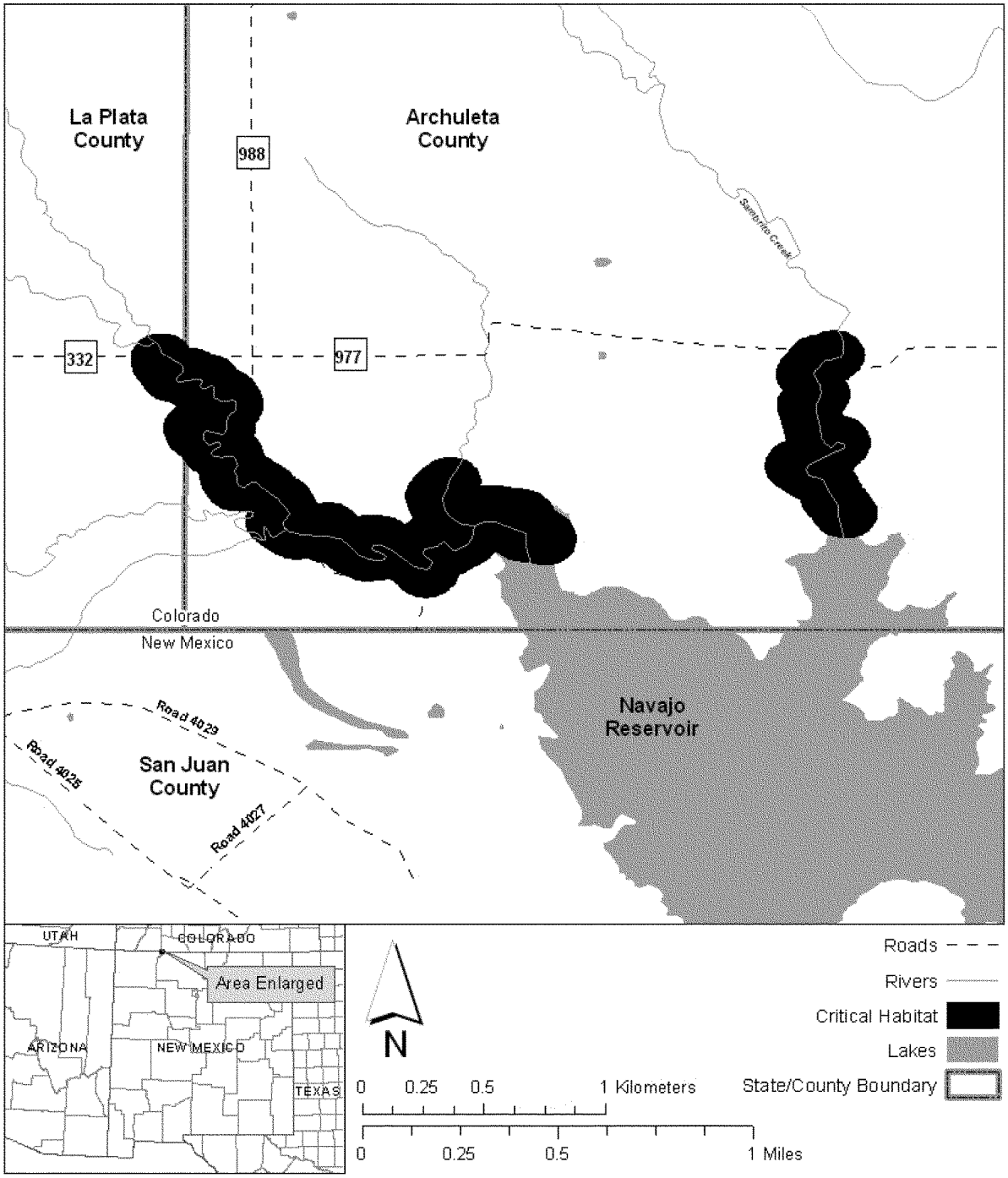


(14) Unit 7—Florida River, Colorado.
Map of Unit 7 follows:



(15) Unit 8—Sambrito Creek, Colorado. Map of Unit 8, follows:

General Locations of Critical Habitat for the New Mexico Meadow Jumping Mouse Unit 8 - Sambrito Creek



* * * * *

Dated: June 7, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–14366 Filed 6–19–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0023; 4500030113]

RIN 1018–AY50

Endangered and Threatened Wildlife and Plants; Listing Determination for the New Mexico Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) as an endangered species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this subspecies and its critical habitat. The effect of these regulations will be to conserve the New Mexico meadow jumping mouse and protect its habitat under the Act.

DATES: We will accept comments received or postmarked on or before August 19, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by August 5, 2013.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2013–0023, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0023; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule. Elsewhere in today's **Federal Register** (and available online at *www.regulations.gov* at Docket Number FWS–R2–ES–2013–0014), we propose to designate critical habitat for the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) under the Act.

This rule consists of: A proposed rule to list the New Mexico meadow jumping mouse as an endangered species. The New Mexico meadow jumping mouse is currently a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to the New Mexico meadow jumping mouse.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on whether we find that it is in danger of extinction throughout all or a significant portion of its range now (endangered) or likely to become endangered in the foreseeable future (threatened). As part of our analysis we consider whether it is threatened or endangered because of any factors affecting its continued existence.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The New Mexico meadow jumping mouse's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to

allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

The May 2013 New Mexico Meadow Jumping Mouse Species Status Assessment Report (SSA Report; Service 2013, entire; see Status Assessment for the New Mexico Meadow Jumping Mouse section below), as well as comments and materials we receive and other supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On December 6, 2007, the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) (jumping mouse) was made a candidate for listing (72 FR 69033) under the Act. In 2008, we received a petition to list the jumping mouse, which was already on the candidate list, and published our petition finding on December 10, 2008 (73 FR 75176). Because the New Mexico meadow jumping mouse was previously identified through our candidate assessment process, the species had already received the equivalent of a substantial 90-day finding and a warranted, but precluded, 12-month finding (see 72 FR 69033, December 6, 2007). Through the annual candidate review process (73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; and 76 FR 66370, October 26, 2011), the Service continued to solicit information from the public regarding life history and current status of the species, historical and current distribution and abundance, potential factors for the species decline (e.g., habitat loss, drought), and ongoing conservation measures being taken to protect the species.

Status Assessment for the New Mexico Meadow Jumping Mouse

Introduction

The SSA Report (Service 2013, entire), available online at *www.regulations.gov,* Docket No. FWS–R2–ES–2013–0023, provides a thorough assessment of jumping mouse biology and natural history and assesses demographic risks (such as small population sizes), threats, and limiting factors in the context of determining viability and risk of extinction for the species. In the SSA Report, we compile biological data and a description of past, present, and likely future threats (causes and effects) facing the New Mexico meadow jumping mouse. Because data in these areas of science are limited, some uncertainties are associated with this assessment. Where we have substantial uncertainty, we have attempted to make our necessary assumptions explicit in the SSA Report. We base our assumptions in these areas on the best available information. Importantly, the SSA Report does not represent a decision by the Service on whether this taxon should be proposed for listing as a threatened or endangered species under the Act. The SSA Report does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its regulations and policies.

Summary of Biological Status and Threats

Our SSA Report documents the results of the comprehensive biological status review for the New Mexico meadow jumping mouse (jumping mouse) and provides a thorough account of the species' overall viability and, conversely, extinction risk (Service 2013, entire). The following is a summary of the results and conclusions from the SSA Report.

The jumping mouse is a small mammal whose historical distribution likely included riparian wetlands along streams in the Sangre de Cristo and San Juan Mountains from southern Colorado to central New Mexico, including the Jemez and Sacramento Mountains and the Rio Grande Valley from Espanola to Bosque del Apache National Wildlife Refuge, and into parts of the White Mountains in eastern Arizona.

In conducting our status assessment we first considered what the jumping mouse needs to ensure viability. We generally define viability as the ability of the species to persist over the long term and, conversely, to avoid extinction. We next evaluated whether the identified needs of the jumping mouse currently are available and the repercussions to the species when fulfillment of those needs is missing or diminished. We then consider the factors that are causing the species to lack what it needs, including historical, current, and future factors. Finally, considering the information reviewed, we evaluate the current status and future viability of the species in terms of resiliency, redundancy, and representation.

Resiliency is the ability of the species to withstand stochastic events (arising from random factors such as weather, flooding, or fire) and, in the case of the jumping mouse, is best measured by habitat size. Redundancy is the ability of a species to withstand catastrophic events by spreading the risk and can be measured through the duplication and distribution of resilient populations across the range of the jumping mouse. Representation is the ability of a species to adapt to changing environmental conditions and can be measured by the breadth of genetic diversity within and among populations and the ecological diversity of populations across the species' range. In the case of the jumping mouse, we evaluate representation based on the extent of the geographical range as an indicator of genetic and ecological diversity. The main areas of uncertainty in our analysis include the minimum amount of suitable habitat needed to support resilient populations and the number of redundant populations needed to provide for adequate redundancy and representation.

Our assessment concluded that the jumping mouse has an overall low viability (probability of persistence) in the near term (between now and the next 10 years) and a decreasing viability in the long-term future (beyond 10 years). In this summary, we present an overview of the comprehensive biological status review. A detailed

discussion of the information supporting this overview can be found in the SSA Report.

For the New Mexico meadow jumping mouse to be considered viable, individual mice need specific vital resources for survival and completion of their life history. One of the most important aspects of the jumping mouse life history is that it hibernates about 8 or 9 months out of the year, longer than most mammals. Conversely, it is only active 3 or 4 months during the summer. Within this short timeframe, it must breed, birth and raise young, and store up sufficient fat reserves to survive the next year's hibernation period. In addition, jumping mice only live 3 years or less and have one small litter annually with seven or fewer young, so the species has limited capacity for high population growth rates due to this low fecundity. As a result, if resources are not available in a single season, jumping mice populations would be greatly stressed.

The jumping mouse has exceptionally specialized habitat requirements to support these life-history needs and maintain adequate population sizes. Habitat requirements are characterized by tall (averaging at least 61 cm (24 in)), dense riparian herbaceous vegetation (plants with no woody tissue) primarily composed of sedges (plants in the Cyperaceae Family that superficially resemble grasses but usually have triangular stems) and forbs (broad-leafed herbaceous plants). This suitable habitat is found only when wetland vegetation achieves full growth potential associated with perennial flowing water. This vegetation is an important resource need for the jumping mouse because it provides vital food sources (insects and seeds), as well as the structural material for building day nests that are used for shelter from predators. The jumping mouse must have rich, abundant food sources during the summer so it can accumulate sufficient fat reserves to survive their long hibernation period. In addition, individual jumping mice also need intact upland areas (areas up gradient and beyond the floodplain of rivers and streams) adjacent to riparian wetland areas because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter. Some uncertainty exists about the particular location of hibernation sites relative to riparian areas.

These suitable habitat conditions need to be in appropriate locations and of adequate sizes to support healthy populations of the jumping mouse. Historically, these wetland habitats would have been in large patches located intermittently along long stretches of streams. The ability of jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize if populations are extirpated (the loss of a population or a species from a particular geographic region). Because counting individual mice to assess population sizes is very difficult and data are unavailable, we can best measure population health by the size of the intact, suitable habitat available.

In considering the area needed for maintaining resilient populations of adequate size with the ability to endure adverse events, we estimate that resilient populations of jumping mice need suitable habitat in the range of at least about 27.5 to 73.2 ha (68 to 181 ac) of along 9 to 24 km (6 to 15 mi) of flowing streams, ditches, or canals. The minimum area needed is given as range due to the uncertainty of an absolute minimum and because local conditions within drainages will vary. This distribution and amount of suitable habitat would allow for multiple subpopulations of jumping mice to exist along drainages and would provide for sources of recolonization if some areas were extirpated due to disturbances. The suitable habitat patches must be relatively close together because the jumping mouse has limited dispersal capacity for natural recolonization. Rangewide, we determined that the jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic conservation areas. This number and distribution of resilient populations is expected to provide the species with the necessary redundancy and representation to provide for viability.

The jumping mouse life history (short active period, short lifespan, low fecundity, specific habitat needs, and low dispersal ability) makes populations highly vulnerable to extirpations when habitat is lost and fragmented. Based on historical (1980s and 1990s) and current (from 2005 to 2012) data, the distribution and abundance of the New Mexico meadow jumping mouse has declined significantly rangewide. The majority of local extirpations have occurred since the late 1980s to early 1990s as we found about 70 formerly occupied locations are now considered to be extirpated.

Since 2005, researchers have documented 29 remaining populations spread across the 8 conservation areas (2 in Colorado, 15 in New Mexico, and 12 in Arizona). Nearly all of the current populations are isolated and widely separated, and all of the 29 populations located since 2005 have patches of suitable habitat that are too small to support resilient populations of jumping mouse. None of them are larger than the needed 27.5 to 73.2 ha (68 to 181 ac), and over half of them are only a few acres in size. In addition, 11 of the 29 populations documented as extant since 2005 have been substantially compromised since 2011 (due to water shortages, excessive grazing, or wildfire and postfire flooding), and these populations could already be extirpated. Seven additional populations in Arizona may also be compromised due to postfire flooding following large recent wildfires. At this rate of population extirpation (based on known historical population losses and possible recent population losses) the probability of persistence of the species as a whole is severely compromised in the near term.

Four of the eight conservation areas have two or more locations known to be occupied by the mouse since 2005, but all are insufficient (too small) to support resilient populations. The remaining four conservation areas have only one known location occupied by the mouse since 2005, and each population is insufficient (too small) to be resilient. Therefore, although researchers have some uncertainty about population sizes of extant localities, the jumping mouse does not currently have the number and distribution of resilient populations to provide the needed levels of redundancy and representation (genetic and ecological diversity) for the species to demonstrate viability.

We next analyzed the past, present, and likely future threats (causes and effects) that may put jumping mouse populations at risk of future extirpation. Because the jumping mouse requires such specific suitable habitat conditions, populations have a high potential for extirpation when habitat is altered or eliminated. And because of the current conditions of isolated populations, when localities are extirpated there is little or no opportunity for natural recolonization of the area due to the species' limited dispersal capacity.

We found a significant reduction in occupied localities likely due to cumulative habitat loss and fragmentation across the range of the jumping mouse. The past and current habitat loss has resulted in the extirpation of historical populations, reduced the size of existing populations, and isolated existing small populations. Ongoing and future habitat loss is expected to result in additional extirpations of more populations. The

primary sources of past and future habitat losses are from grazing pressure (which removes the needed vegetation) and water management and use (which causes vegetation loss from mowing and drying of soils), lack of water due to drought (exacerbated by climate change), and wildfires (also exacerbated by climate change). Additional sources of habitat loss are likely to occur from scouring floods, loss of beaver ponds, highway reconstruction, residential and commercial development, coalbed methane development, and unregulated recreation.

These multiple sources of habitat loss are not acting independently, but likely produce cumulative impacts that magnify the effects of habitat loss on jumping mouse populations. Historically, larger connected populations of jumping mice would have been able to withstand or recover from local stressors, such as habitat loss from drought, wildfire, or floods. However, the current condition of small populations makes local extirpations more common. And the isolated state of existing populations makes natural recolonization of impacted areas highly unlikely or impossible in most areas.

Considering the species' biological status now and its likely status into the future, without active conservation (i.e., grazing management and water management) existing populations are vulnerable to extirpation (at least 11 have already undergone substantial impacts since 2011) and, therefore, the species as a whole is currently at an elevated risk of extinction. None of the 29 populations known to exist since 2005 is of sufficient size to be resilient. Assuming this rate of population loss continues similar to recent years, the number of populations could be severely curtailed in the near term eliminating the level of redundancy needed to withstand catastrophic drought and wildfire, along with the additive impacts of multiple threats. In addition to past sources of habitat loss, ongoing grazing, water shortages, and high-impact wildfire (the latter two exacerbated by climate change), in addition to localized actions, will continue to put all of the remaining locations at considerable risk to extirpation in the near term (between now and the next 10 years) and increasing over the long term. In considering the needed level of representation, while sufficient diversity likely still exists across the eight conservation areas, the species representation is relatively low because none of these conservation areas currently have resilient populations. Therefore, we conclude that the overall probability of persistence is low in the near term and decreasing in the future due to the lack of adequate resiliency, redundancy, and representation.

Determination

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a), the Secretary is to make threatened or endangered determinations required by subsection 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is threatened or endangered are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' A threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definitions of threatened or endangered, we determine whether any species is an endangered species or a threatened species because of 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; and (E) other natural or manmade factors affecting its continued existence.

Proposed Listing Status Determination

Based on our review of the best available scientific and commercial information, we conclude that the New Mexico meadow jumping mouse is currently in danger of extinction throughout all of its range and, therefore, meets the definition of an endangered species. This finding, explained below, is based on our conclusions that the species exhibits low viability as characterized by having no resilient populations, resulting in low overall representation across the species range and no level of redundancy. We found the jumping mouse is at an elevated risk of extinction now and no data indicate that the situation will improve without significant conservation intervention. We, therefore, find that the jumping mouse warrants an endangered species listing status determination.

On the basis of our biological review documented in the SSA Report assessment, we found that the species is inherently vulnerable to population extirpations due to their short active period, short lifespan, low fecundity, specific habitat needs, and low dispersal ability (Factor E). The species is currently limited to at most 29 small, isolated populations, all of which are incapable of withstanding adverse events, and, therefore, are not resilient (Factor E). This total is reduced from nearly 100 locations known historically. Of these 29 populations where the jumping mice have been found extant since 2005, at least 11 populations have been substantially compromised in the past 2 years and 7 others may have been affected by recent wildfires. Because these populations have been compromised, the actual current number of extant populations may already be less than 29, and other populations are expected to be lost, placing the species at a higher risk of extinction.

The remaining small, isolated jumping mouse populations are particularly threatened with extirpation from habitat loss and modifications (Factor A). The main sources of habitat loss, degradation, and modification, include grazing pressure (which removes the needed vegetation), water management and use (which causes vegetation loss from mowing and drying of soils), lack of water due to drought (exacerbated by climate change), and wildfires (also exacerbated by climate change). Additional sources of habitat loss are likely to occur from floods, loss of beaver ponds, highway reconstruction, residential and commercial development, coalbed methane development, and unregulated recreation.

In addition to the individual sources of habitat loss and modification under Factor A, the cumulative effects of the multiple sources of habitat loss are acting on populations such that the effects on the jumping mouse and their immediacy are significant throughout its entire current range. Historically, when populations of jumping mice were larger and more connected, the species could have withstood many of these adverse events (such as floods or wildfire) or recolonized areas after local extirpations. However, the current conditions of small and isolated populations reduce the ability of the jumping mouse to endure such adverse events, and natural recolonization

following local extirpations is impossible in most cases.

We evaluated whether the jumping mouse is in danger of extinction now (i.e., an endangered species) or is likely to become in danger of extinction in the foreseeable future (i.e., a threatened species). The foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. A key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is ''in danger of extinction'' now. In the case of the jumping mouse, the best available information indicates that, while major range reductions (that is the overall geographic extent of the species occurrences) have not happened, habitat destruction and isolation have resulted in significant loss of populations and reductions in total numbers of individuals. These losses are ongoing as at least 11 of the 29 known populations have been significantly compromised since 2011. Without substantial conservation efforts, this trend of population loss is expected to continue and result in an elevated risk of extinction of the species. Many of the threats faced by the species would not have historically been significant, but past reductions in population size and fragmentation (mainly due to habitat loss from grazing) causing isolation of populations makes the current threats particularly severe. As a result, the species is currently at an elevated risk that stochastic events (e.g., drought, winter storm, wildfire, and floods) will affect all known extant populations making the jumping mouse at a high risk of extinction. Therefore, because no resilient populations currently exist to support persistence of the jumping mouse, it is in danger of extinction throughout all of its range now, and appropriately meets the definition of an endangered species (i.e., in danger of extinction).

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The threats to the survival of this species occurs throughout its range and are not restricted to any particular significant portion of its range. Accordingly, our assessments and determinations apply to this species throughout its entire range.

In conclusion, as described above, the jumping mouse has experienced significant reductions in population numbers (based on habitat reductions and fragmentation), is especially vulnerable to impacts due to its life history and ecology, and is subject to significant current and ongoing threats now. After a review of the best available scientific information as it relates to the status of the species and the five listing factors, we find the New Mexico meadow jumping mouse is in danger of extinction now. Therefore, on the basis of the best available scientific and commercial information, we propose to list the New Mexico meadow jumping mouse as an endangered species, in accordance with section 3(6) of the Act. We find that a threatened species status is not appropriate for the New Mexico meadow jumping mouse because the overall risk of extinction is high at this time because none of the existing populations are sufficiently resilient to support viable populations and this species is currently in danger of extinction.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may not occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of New Mexico would be eligible for Federal funds to implement management actions that promote the protection and recovery of the New Mexico meadow jumping mouse. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the New Mexico meadow jumping mouse is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include livestock grazing, irrigation ditch maintenance and repair, recreational activities associated with Federal agencies or State parks that may affect habitat or the species; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Unauthorized modification or manipulation of riparian habitat, including mowing or burning of occupied habitats, especially during the active season (generally May through October).

(3) Actions that would result in the unauthorized destruction or alteration of the species' habitat, as described in this rule or within the May 2013 SSA Report (Service 2013). Such activities could include, but are not limited to, the removal of riparian shrubs or herbaceous vegetation by any means.

(4) Unauthorized modification of any stream or water body or removal or destruction of herbaceous vegetation in any stream or water body in which the New Mexico meadow jumping mouse is known to occur.

(5) Unlawful destruction or alteration of New Mexico meadow jumping mouse habitats (e.g., unpermitted instream dredging, impoundment, water diversion or withdrawal, channelization, discharge of fill material) that impairs essential behaviors such as breeding, feeding, or sheltering, or results in killing or injuring a New Mexico meadow jumping mouse.

(6) Capture, survey, or collection of specimens of this taxon without a permit from us pursuant to section 10(a)(1)(A) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding the scientific information upon which this proposed rule is based. The purpose of peer review is to ensure that our listing determination and critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the New Mexico Ecological Services Field Office at 505–346–2525, as soon as possible. To allow sufficient time to process requests, please call no later than 1 week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Required Determinations

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email the comments to this address: *Exsec@ios.goi.gov*.

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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

A complete list of references used in support of this rulemaking is available on the Internet at *http://www.regulations.gov* within the May 2013 New Mexico Meadow Jumping Mouse Species Status Assessment Report (Service 2013, Literature Cited) and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Mouse, New Mexico meadow jumping'' in alphabetical order under Mammals to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Mouse, New Mexico meadow jumping.	Zapus hudsonius luteus.	U.S. (NM, AZ, CO)	U.S. (NM, AZ, CO)	E	.....	NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: June 4, 2013.

Rowan W. Gould.

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–14365 Filed 6–19–13; 8:45 am]

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Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 738, 740, 742 et al.

Wassenaar Arrangement 2012 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, 743, 746, 752, 770, 772, and 774

[Docket No. 121207691–3383–02]

RIN 0694–AF83

Wassenaar Arrangement 2012 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain of the items subject to Department of Commerce jurisdiction. This final rule revises the CCL to implement changes made to the Wassenaar Arrangement's List of Dual-Use Goods and Technologies (Wassenaar List) maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement, or WA) at the December 2012 WA Plenary Meeting (the Plenary). The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. This rule harmonizes the CCL with the changes made to the WA List at the Plenary by revising ECCNs controlled for national security reasons in each category of the CCL, except category 8, as well as amending the General Software Note, WA reporting requirements, and definitions section in the EAR. BIS is adding unilateral controls to the CCL for specific software and technology for aviation control systems, which the WA agreements removed from the WA List, i.e., EAR national security controls.

DATES: This rule is effective: June 20, 2013.

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482 2440 or by email: *Sharron.Cook@bis.doc.gov*.

For technical questions contact:

Categories 1 & 2: Michael Rithmire at 202–482–6105.

Category 3: Brian Baker at 202–482–5534.

Categories 4 & 5: ITCD staff 202–482–0707.

Category 6 (optics): Chris Costanzo at 202–482–0718.

Category 6 (lasers): Mark Jaso at 202–482–0987.

Category 6 (sensors and cameras): John Varesi 202–482–1114.

Category 7: Jaymi Love 202–482–6581.

Category 9: Daniel Squire 202–482–3710.

SUPPLEMENTARY INFORMATION:

Background

The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a group of 41 like-minded states committed to promoting responsibility and transparency in the global arms trade, and preventing destabilizing accumulations of arms. As a Participating State, the United States has committed to controlling for export all items on the WA control lists. The lists were first established in 1996 and have been revised annually thereafter. Proposals for changes to the WA control lists that achieve consensus are approved by Participating States at annual December Plenary meetings. Participating States are charged with implementing the agreed list changes as soon as possible after approval. Implementation of WA list changes ensures U.S. companies have a level playing field with their competitors in other WA member states.

Revisions to the Commerce Control List

Out of the 37 Export Control Classification Numbers (ECCNs) included in this rule, the following 28 ECCNs on the Commerce Control List (CCL) are revised to implement the changes to the Wassenaar List of Dual-Use Goods and Technologies agreed to at the December 2012 WA Plenary meeting: ECCNs 1A004, 1C001, 2B001, 2B006, 2D001, 2D002, 3A001, 3A002, 3B001, 3C002, 4D001, 5A001, 5B001, 5E001, 5A002, 5E002, 6A001, 6A002, 6A005, 6C004, 6C005, 7A001, 7D003, 7E001, 7E004, 9A001, 9A018 and 9E003; and the following two (2) ECCNs, 2D003 and 7D004, are added to the CCL to implement the changes to the Wassenaar List of Dual-Use Goods and Technologies agreed to at the December 2012 WA Plenary meeting.

Corresponding changes related to the movement of 5A001.i to 5A001.f.1 are made to ECCNs 5A980, 5D001, 5D980, 5E001and 5E980.

This rule also makes additions to 0D521 and 0E521 for ''source code'' for the ''development'' of fly-by-wire control systems and ''technology'' for fly-by-wire control systems, see 7D004 for explanation.

Category 1 Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins''

1A004 (Protective and Detection Equipment and Components)

In the introductory paragraph .a of the Items paragraph in the List of Items Controlled section, ''Gas masks'' is replaced by ''Full face masks'' and a Technical Note is added to explain that ''for the purpose of 1A004.a, full face masks are also known as gas masks.'' The masks controlled in 1A004.a protect against more than just gases and the term gas masks has been replaced by full face masks in manufacture data sheets. This change in terminology does not change the scope of the control.

In the Note at the end of the Items paragraph in the List of Items Controlled section, paragraph .b is amended by replacing ''Equipment'' with ''Occupational health or safety equipment'' to clarify the scope of the exclusion Note.

1C001 (Materials Specially Designed for Use as Absorbers of Electromagnetic Waves, or Intrinsically Conductive Polymers)

Paragraph 1C001.b (Piezoelectric polymers and copolymers) of the Items paragraph in the List of Items Controlled section is amended by adding an exclusion Note for materials, specially designed or formulated for laser marking of polymers; or laser welding of polymers, because these materials are not used in military applications.

Paragraph 1C001.c (Seals, gaskets, valve seats, bladders or diaphragms) of the Items paragraph in the List of Items Controlled section is amended by adding an exclusion Note for 1C001.c materials in liquid form, because the liquid form is not used in military applications but is used in commercial applications to make a transparent conductive layer. It is also used, for example, in the liquid crystal panel of televisions, personal computers, and other such commercial commodities.

Category 2—Materials Processing

2B001 (Machine Tools)

The Header is amended to remove the phrase ''and specially designed components'' to harmonize with the changes to 2B001.f.

The Unit paragraph of the List of Items Controlled section is amended by removing the phrase ''components in $ value'' to harmonize with the changes in 2B001.f. Amendments to the Items

paragraph of the List of Items controlled section in 2B001 are as follows.

The exclusion Note 2 to 2B001 is amended by correcting the spelling of jewelry in paragraph .d and adding paragraph .e for dental prostheses.

2B001.a (Machine tools for turning) is amended by revising the positioning accuracy in 2B001.a.1 from 4.5 µm to 3.0 µm and moving the phrase ''according to ISO 230/2 (2006)'' within that paragraph, and adding the phrase ''or national equivalents'' to harmonize with WA agreed text.

2B001.b (Machine tools for milling) is amended by revising the positioning accuracy in 2B001.b.1.a from 4.5 µm to 3.0 µm and moving the phrase ''according to ISO 230/2 (2006)'' within that paragraph, and adding the phrase ''or national equivalents'' to harmonize with WA agreed text.

2B001.b.2 (Five or more axes machine tools for milling) is amended by adding three paragraphs b.2.a, b.2.b and b.2.c with combinations of positioning accuracy and travel length parameters: equal to or less than 3.0 µm/less than 1m, equal to or less than 4.5 µm/greater than 1m and less than 2 m, and equal to or less than 4.5 + 7x(L–2) µm (L is the travel length in meters)/equal to or greater than 2m, respectively. In addition, this rule moves the phrase ''according to ISO 230/2 (2006)'' within b.2.b and b.2.c, and adds the phrase ''or national equivalents'' to harmonize with WA agreed text. A Note is added after b.2 to point people to 2B001.b.2.d for parallel mechanism machine tools.

2B001.b.2.d is added to clarify that 2B001 controls five or more axes machine tools for milling that are also 'parallel mechanism machine tools.' A Technical Note accompanying this paragraph explains that a 'parallel mechanism machine tool' is a machine tool having multiple rods, which are linked with a platform and actuators; each of the actuators operates the respective rod simultaneously and independently.

2B001.b.3 is amended by moving the phrase ''according to ISO 230/2(2006)'' in this paragraph and replacing ''along any linear axis'' with ''along one or more linear axis'' to clarify the control text. This rule also adds the phrase ''or national equivalents'' to harmonize with WA agreed text.

2B001.b.4.b is amended by replacing the period with a semi-colon to correct the punctuation.

2B001.f (Deep-hole-drilling machines and turning machines) is amended by removing the phrase ''and specially designed components therefor,'' because components for these machines are general and not specially designed.

2B006 (Dimensional Inspection or Measuring Systems, Equipment, and ''Electronic Assemblies'')

2B006.b.1 ('Linear displacement' measuring instruments) is amended by adding a Note to reference 2B006.b.1.c for controls on displacement measuring ''laser'' interferometers.

2B006.c (Equipment for measuring surface roughness (including surface defects)) is amended by replacing ''irregularities'' with ''roughness (including surface defects)'' and removing the phrase ''as a function of angle.'' This change will clarify the scope of controls to integrate some of the expanded abilities of measuring equipment.

2D001 (''Software'' for ''Development'' and ''Production'' for Listed Category 2 Equipment)

The Header is simplified, because a more detailed description of controlled software is now in the Items paragraph of the List of Items Controlled section.

The Items paragraph is amended by adding two paragraphs that split the controls that were previously in the Header, which separates ''use'' from ''development'' or ''production'' software in order to move 2B002 ''use'' software from 2D001 to the new 2D003. Paragraph .a controls ''development'' or ''production'' of equipment controlled by 2A001 or 2B001 to 2B009. Paragraph .b narrows the scope for ''use'' to equipment specified by 2A001.c, 2B001, or 2B003 to 2B009, which excludes most of 2A001 and all of 2B002 (Numerically controlled optical finishing machine tools equipped for selective material removal * * *.).

A Note is added to exclude ''part programming ''software'' that generates ''numerical control'' codes for machining various parts'' from 2D001 controls, because this software cannot directly operate the Computer Numeric Controller (CNC) equipment.

2D002 (''Software'' for Electronic Devices, Even When Residing in an Electronic Device or System, Enabling Such Devices or Systems To Function as a ''Numerical Control'' Unit, Capable of Coordinating Simultaneously More Than 4 Axes for ''Contouring Control'')

Note 1 is amended by replacing the word ''controlled'' with ''specified'' to harmonize with the WA list and clarify the meaning of the Note.

Note 2 is amended by replacing the word ''controlled'' with ''specified'' in two places to harmonize with the WA list and clarify the meaning of the Note. Also, a reference to 2D003 is added.

Note 3 is added to exclude ''software'' for the minimum necessary operation of machine tools not specified by Category 2 when such ''software'' is exported with the machine tools.

2D003 (''Software'', Designed or Modified for the Operation Of Equipment Specified by 2B002, That Converts Optical Design, Workpiece Measurements and Material Removal Functions Into ''Numerical Control'' Commands To Achieve the Desired Workpiece Form)

ECCN 2D003 is added to control the ''use'' software for 2B002 optical finishing machines, which is critical to the function of 2B002 machines. This ECCN is controlled for national security (NS2) and for anti-terrorism (AT1—Cuba, Iran, N. Korea, Syria and Sudan) reasons; see Supplement No. 1 to part 738 of the EAR. License Exception TSR is available to countries in Country Group B (see Supp. No. 1 to Part 740), see § 740.6 of the EAR.

Category 3—Electronics

3A001 (Electronic Components and Specially Designed Components Therefor) and 3A002 (General Purpose Electronic Equipment and Accessories Therefor)

3A001.a.7 (Field programmable logic devices) is amended by this rule. Paragraph a.7.a is revised by replacing ''digital input/outputs'' with ''single-ended digital input/outputs,'' which narrows the scope of control. The level of control is amended by revising the maximum number of single-ended digital input/outputs from ''greater than 200'' to ''500 or greater'' to reflect the advances made in recent years to Field Programmable Gate Array (FPGA) devices and to remove controls on older devices.

Paragraph a.7.b parameter ''system gate count'' is changed to ''an 'aggregate one-way peak serial transceiver data rate' or 200 Gb/s or greater'' to remove the arbitrary and problematic metric of system gates as a control parameter and replace it with a more modern and meaningful metric for FPGAs with embedded transceiver circuitry.

A Technical Note is added to define 'Aggregate one-way peak serial transceiver data rate,' which is the product of the peak serial one-way transceiver data rate times the number of transceivers on the FPGA.

3A001.b.2 (Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers) is amended by adding -70 dBm as an equivalent output power parameter to 0.1 nW in paragraph b.2.d, for consistency.

The frequency of 37.5 is changed to 37 GHz in paragraphs b.2.d and b.2.e.

For many years, controls on microwave components have used 37.5 GHz as the frequency breakpoint between military and civilian applications. In fact, the proper breakpoint is 37 GHz, as per the ETSI EN 300 197 standard.

Paragraph b.2.e is amended by removing the fractional bandwidth parameter, because a fractional bandwidth as large as 10%, within a band that is only 16% wide, is illogical. To compensate, this rule increases the output power parameter from 0.25 W (24 dBm) to 1.0 W (30 dBm) to align with state-of-the-art output power in this frequency range.

Paragraph b.2.f is amended by adding a ceiling to the operation frequency of 75 GHz, which is the top of the *V* band to align with waveguide bands. The average output power parameter is raised from 0.1 nW to 31.62 mW (15 dBm) with a ''fractional bandwidth'' greater than 10%, which aligns with the 15 dBm output power control threshold for network analyzers in 3A002.e.1.

Two new parameter paragraphs are added for MMIC power amplifiers controlled under b.2.g and b.2.h to add two new frequency ranges to align with the 90 GHz top of the E band-WR–12 waveguide upper limit. Paragraph b.2.g controls MMIC power amplifiers rated for operation at frequencies exceeding 75 GHz up to and including 90 GHz with an average output power greater than 10 mW (10 dBm) with a ''fractional bandwidth'' greater than 5%. Paragraph b.2.h controls MMIC power amplifiers rated for operation at frequencies exceeding 90 GHz and with an average output power greater than 0.1 nW (-70 dBm).

3A001.b.4 (Microwave solid state amplifiers and microwave assemblies/modules containing microwave solid state amplifiers) is amended by adding ''either'' to paragraph b.4.f.3 to eliminate an ambiguity in the current text. The Technical Note below this paragraph is corrected to harmonize with the WA list. Note 3 is added to clarify that 3A001.b.4 includes transmit/receive modules and transmit modules.

3A001.b.10 (Oscillators or oscillator assemblies) and 3A002.d.4 (signal generators) are amended by replacing the word ''for'' with ''anywhere within the range of'' in b.10.a, b.10.b, 3A002.d.4.a and d.4.b to clarify that oscillators or oscillator assemblies and signal generators, respectively, are controlled if it meets the parameters at any point within the selected ranges.

3A001.b.11 (''Frequency synthesizer'' ''electronic assemblies'') is amended by revising the ''frequency switching time'' in paragraph b.11.a from 312 ps to 156 ps. The frequency switching time threshold of 3A001.b.11.a is the inverse of the lower frequency control threshold (current, 312 ps = 1/3.2 GHz). The new threshold is 156 ps = 1/6.4 GHz. This would retain control on Digital to Analog Converter (DAC)-based synthesizer assemblies having sample rate exceeding 16 GSa/s (frequency is calculated by dividing sample rate by 2.5).

Paragraphs 3A001.b.11.b and 3A002.d.3.b are amended by revising the low-frequency threshold from 3.2 GHz to 4.8 GHz to accommodate the 802.11ac (Very High Throughput—VHT) amendment. The 802.11ac standard uses wider bandwidths for higher throughputs and data rates to address several uses, including wireless displays for in-home distribution of High Definition Television (HDTV).

Paragraphs 3A001.b.11.f, b.11.g, 3A002.c.2, c.3, d.1, d.2, d.3.f, d.4.a, d.4.b, d.5, e.1, and e.2, are amended by raising the high-frequency limit from 70 GHz to 75 GHz, which corresponds to the top of the V-band (waveguide). Aligning the specified frequency to standard waveguide frequency breakpoints makes this parameter more relevant to national security concerns.

3A002.c.4 is amended by revising the Heading from ''Dynamic signal analyzers'' to ''Signal analyzers'' and cascading the control parameters to clarify the controls.

Paragraph c.4.a is amended by removing ''a'' and revising the ''real-time bandwidth'' from ''40 MHz'' to ''85 MHz'' to update the control level. The definition for ''real-time bandwidth'' is also updated in Part 772 of the EAR to better define the concept of gap-free analysis of the input data, and to assure that the scope of control remains specific and focused, which is also the reason for adding paragraph c.4.b that adds a gap and windowing effect aspect to the control.

The Note to 3A002.c.4 is amended by changing ''dynamic signal analyzers'' to ''signal analyzers'' for clarity.

Technical Notes are added for 3A002.c.4.b to explain probability of discovery, also known as probability of intercept or probability of capture.

3A002.c.5 is added to add a new control parameter for ''frequency mask trigger,'' which provides the capability to capture sporadic transient RF signals within other closely spaced RF signals. A definition for ''frequency mask trigger'' is added to Part 772 in relation to this new paragraph.

3A002.d.3.a (''frequency switching time'' less than 312 ps) is removed as a parameter for frequency synthesized signal generators, because extension of the 802.11 standard for consumer wireless products in the frequency range 5–6 GHz has rendered the existing control threshold obsolete.

3A002.e (Network analyzers) is amended by adding ''An'' to the beginning of paragraph e.1 for consistency and correct grammar. This rule also removes the ''or'' at the end of the paragraph, because two additional paragraphs are added to cover frequency ranges up to 110 GHz. This change makes it clear that 110 GHz is the normal max frequency for 1.00 mm coaxial microwave connectors. A Technical Note is also added to define 'Nonlinear vector measurement functionality,' which is a term used in paragraph e.3. Paragraph e.4 (former paragraph e.2) is amended by revising the maximum operating frequency from 70 GHz to 110 GHz.

3A002.f (Microwave test receivers) is amended by revising the maximum frequency control threshold of 3A002.f .1 from 70 GHz to 110 GHz, to align with 3A002.e, because of the similarity between 3A002.e network analyzers and 3A002.f microwave test receivers.

3B001 (Equipment for the Manufacturing of Semiconductor Devices or Materials)

3B001.a.2 (Metal Organic Chemical Vapor Deposition (MOCVD) reactors) is amended by simplifying the control text to clarify that MOCVD systems used to produce nitride based devices are within the scope of control.

3B001.b (Equipment designed for ion implantation) is amended by removing and reserving paragraph b.1 (beam energy (accelerating votage) exceeding 1 MeV), which controlled ion implant systems used for the manufacture of memory integrated circuits (Example: FLASH NAND). This technology is ubiquitous and equivalent tools are readily obtained globally.

Paragraph b.2 is amended by raising the beam energy parameter and specification of the implant materials, which assures only equipment used in the production of radiation hardened ICs is captured.

Paragraphs b.3 and b.4 are amended by moving the ''or'' from the end of b.3 to the end of b.4, because a new paragraph b.5 is added.

Paragraph b.5 is added to control equipment using channeled silicon ion beams in heated equipment.

3A001.h (Multi-layer masks with phase shift layer not specified by 3B001.g) is amended by adding two new parameters. Paragraph h.1 specifies glass birefringence of the mask (less than 7 nm/cm), which delineates phase shift masks that are used for defining geometries consistent with the

lithography control. Paragraph h.2 specifies the light source wavelength of the lithography equipment (less than 245 nm), to control only phase shift masks that are consistent with the lithography control of 245nm wavelength source. This revision will control phase shift masks that are used for emerging Extreme Ultra-Violet (EUV) lithography. The addition of the phrase ''not specified by 3B001.g'' to the introductory text in 3A001.h resolves the possible ''double coverage'' between 3B001.g and 3B001.h.

3C002 (Resist Materials and ''Substrates'' Coated With Specified Resists)

License Exceptions GBS and CIV paragraphs are revised to read, ''Yes for 3C002.a provided they are not also controlled by 3C002.b through .e'', to be more accurate and concise.

Paragraph 3C002.a (Resists designed for semiconductor lithography) is amended by cascading the parameter paragraphs and adding a new paragraph a.2. Paragraph a.1 now controls positive resists adjusted (optimized) for use at wavelengths equal to or greater than 15 nm, but less than 245 nm. Paragraph a.2 controls resists adjusted (optimized) for use at wavelengths greater than 1 nm, but less than 15 nm. These revisions are made to be more specific about the controls.

Paragraph 3C002.c (All resists designed for use with X-rays, with a sensitivity of 2.5 J/mm^2 or better) is removed and reserved, because these resists are not used for the fabrication of semiconductor devices.

Paragraph 3C002.d (All resists optimized for surface imaging technologies) is amended by removing the reference to silylated resists, as well as the definition for silylation techniques in the Related Definition paragraph of the List of Items Controlled section, because it was determined that it is not necessary to specifically call out silylated resists.

Category 4—Computers

4D001 ''Software''

4D001.a is amended by deleting the term ''use,'' because no ''use'' software of concern could be identified for this entry, and by removing 4A002 from the scope of control, because it was removed in 2004.

Category 5 Part 1—''Telecommunications''

5A001 (Telecommunications Systems, Equipment, Components and Accessories)

The License Requirement section is amended by removing 5A001.i from NS2 and SL controls, because items previously controlled under paragraph .i are moved to paragraph .f.1 Paragraph .f.1 is already controlled under NS2. Paragraph f.1 is added to the SL control paragraph.

The License Requirement Notes paragraph is amended by replacing the reference to 5A001.i with 5A001.f.1.

License Exception LVS eligibility paragraph is amended by revising reference to paragraph .f to read f.2, f.3, f.4 in order to narrow the scope, because the interception equipment in 5A001.f.1 is too sensitive to receive License Exception LVS eligibility.

5A001.f (Mobile telecommunications jamming equipment) is amended by adding ''interception or'' in order to expand the scope of control to all mobile telecommunications jamming and interception equipment that is of national security concern, as well as equipment that monitors the network to detect jamming and interception that is of national security concern. 5A001.i was combined with the former 5A001.f as a clarification because interception and jamming are often interrelated functions. 5A001.f.1 (Interception equipment designed for the extraction of voice or data, transmitted over the air interface) is moved from 5A001.i and license requirements are not changed.

5A001.f.2 (interception equipment not specified in 5A001.f.1) is designed to control equipment that captures and processes the air interface (e.g., the air link between a handset and a base station, over which voice/data and metadata are transmitted) in order to extract client device or subscriber indicators (such as IMSI, TIMSI, IMEI), signalling or other metadata contained therein, but not without also processing the voice or data channels contained therein. Licenses are required for countries listed in NS2 and AT1 of the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR.

5A001.f.3 (Jamming equipment) was the former 5A001.f and license requirements are not changed.

5A001.f.4 (Radio Frequency (RF) monitoring equipment designed or modified to identify the operation of items specified in 5A001.f.1, f.2, or f.3) is added to control passive counter surveillance tools. Licenses are required for countries listed in NS2 and AT1 of the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR.

Regarding certain types of equipment that are not controlled by 5A001.f, the term 'interception equipment' excludes equipment used to operate or test the network (e.g., devices which measure signal strength, and do not require the signal's contents to be decoded, demodulated, or recorded, are not considered 'interception equipment'), and also readily available radio monitoring equipment for analog communications found in, for example, taxi-cab radios and home police scanners. The Note is amended to also generally exclude equipment designed for mobile telecommunications network operators, designed for the ''development'' or ''production of mobile telecommunications equipment or systems, or specially designed for the interception of analog Private Mobile Radio (PMR), IEEE 802.11 WLAN.

Nota Bene (NB) 1 is amended by removing the text ''For GNSS jamming equipment,'' and adding the text ''For items specified by 5A001.f.1 (including as previously specified by 5A001.i), see also 5A980 and U.S. Munitions List (22 CFR 121)'', because 5A001.f is expanded and there may be some related equipment in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130) that should be considered when classifying this type of equipment.

A Nota Bene (NB) 2 is added to reference 5A001.b.5 for radio receivers in order to clarify that 5A001.f does not apply to radio receivers.

5A001.h (Counter Improvised Explosive Device (IED) equipment and related equipment) is amended by adding a new paragraph h.2 to control equipment using techniques designed to enable radio communications in the same frequency channels on which co-located equipment specified by 5A001.h.1 is transmitting.

The Nota Bene (NB) is amended by removing the phrase ''ECCN 5A001.f and,'' because that reference now appears in 5A001.h.1.

5A001.i is reserved and the items are moved to 5A001.f.1, as explained above. To harmonize with this move, seventeen (17) references to 5A001.i are changed to 5A001.f.1 in § 738.3(a)(1) (Commerce Country Chart structure—ECCNs that require a license to all destinations), six (6) references are changed in § 740.2(a)(3) (Restrictions on all license exceptions), five (5) references are changed in § 742.13 (a)(1) (License requirements for communications intercepting devices * * *), six (6) references are changed in § 746.7(a)(1) (Iran license requirements), and six (6)

references are changed in § 752.3(a)(7) (Special Comprehensive License ineligible items).

The Nota Bene (NB) of 5A001.i is amended to reference 5A001.f.1 for items previously specified by 5A001.i.

5A980 (Devices primarily useful for the surreptitious interception of wire, oral, or electronic communications) is amended to replace the reference to 5A001.i with 5A001.f.1 in the Heading and the Related Controls paragraph of the List of Items Controlled section. The structure of the List of Items Controlled section is corrected by adding the Unit paragraph, adding the Related Controls Header to the Related Controls paragraph, and adding the Related Definitions paragraph.

5B001 (Telecommunication Test, Inspection and Production Equipment, Components and Accessories)

The License Exception STA eligibility paragraph is amended by removing ''use,'' because ''use'' was removed from control in 5B001.a.

5B001.a. is amended to delete ''or use'' as no ''use'' software of concern could be identified for this entry.

The Note to 5B001.a was amended to replace ''control'' with ''apply to'' to conform with Wassenaar.

5D001 (''Software'')

The SL control paragraph in the License Requirements section is amended by replacing the reference to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

The License Requirements Notes paragraph in the License Requirements section is amended by replacing three references to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

5D980 (Other ''Software'', Other Than That Controlled by 5D001 * *)*

The Header is amended by replacing the reference to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

The Related Control paragraph in the List of Items Controlled section is amended by replacing three references to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

5E001 (''Technology'')

The SL control paragraph in the License Requirements section is amended by replacing the reference to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

The License Requirements Notes paragraph in the License Requirements section is amended by replacing two references to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

5E001.d (''Technology'' * * * for the ''development'' or ''production'' of Microwave Monolithic Integrated Circuit (MMIC) power amplifiers specially designed for telecommunications) is amended by revising paragraphs 5E001.d.4, d.5, and d.6, as well as adding new paragraphs 5E001.d.7 and d.8, to mirror the revision made to 3A001.b.2 (explained above).

*5E980 (''Technology'', other than that controlled by 5E001.a * * *)*

The Header is amended by replacing two references to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

The Related Control paragraph in the List of Items Controlled section is amended by replacing five references to 5A001.i with 5A001.f.1, because that equipment was moved in 5A001.

Category 5 Part 2—''Information Security''

The Cryptography Note (Note 3 to Category 5 Part 2 (Cat 5P2)) is changed in two ways. It is reformatted in order to add a new paragraph .b, and a new Note to the Cryptography Note is added to help industry better understand how the existing 'mass market' provisions and requirements of the Cryptography Note (i.e., new paragraph a.) are applied.

Regarding the new paragraph b., this new paragraph provides that ECCN 5A002 and 5D002 do not control certain hardware components of existing items described in paragraph a. of the Note. While certain components of ''mass market'' products described in paragraph a. to Note 3 are themselves sold or distributed through ''mass market'' channels and are therefore decontrolled under paragraph a., other comparable components for ''mass market'' items are not separately sold to the public via retail channels. New paragraph b. removes ECCN 5A002 and 5D002 controls from hardware components that are factory-installed into a mass marketed product, and from functionally equivalent aftermarket replacements of Original Equipment Manufacturer (OEM) components—components that are identical in form, fit and function to the OEM components, with certain restrictions as follows.

First, paragraph b. is limited to hardware components for existing items described in paragraph a. of Note 3 and to hardware components that have been designed for those existing items. Paragraph b. does not apply to a component that is designed for a brand new type of item that has never been sold before, or that has not previously had cryptographic functionality. Instead, the end-product must first be established as a 'mass market' product before its components may qualify for paragraph b.

Second, paragraph b.1. excludes components whose primary function or set of functions is ''information security.'' Therefore, cryptographic co-processors, cryptographic libraries/modules, Trusted Platform Modules (TPMs), and components that provide an open cryptographic interface are not eligible for decontrol under paragraph b.

Third, paragraph b.2. excludes components that could introduce new cryptographic functionality or enhance existing cryptographic functionality into an array of products, if such functionality does not already exist in the 'mass market.' Components that provide enhanced or additional cryptographic functionality to an existing 'mass market' product are not decontrolled under paragraph b. This exclusion applies to both 'standard add-on accessories'—additions to 'mass market' products that impart new features—and to 'tailored add-on accessories'—additions to 'mass market' products that transform the product into a non-consumer type item (e.g., tailored for network operators, security operators, police/military/intelligence, etc.)

Paragraph b.3 excludes components that provide custom/substitute cryptography or made-to-order customizations (e.g., tailored form/fit/function) but no algorithm changes. The requirements set forth in Section 742.15(b) for mass market components also apply to the hardware components eligible for decontrol under new paragraph b. to Note 3.

Paragraph b.4. states that details of the component and end-item must be available to BIS when necessary. BIS does not intend to change the scope of any of the reporting requirements under License Exception ENC. In particular, BIS does not intend to require exporters to collect any more information on the products that a component is going into than is currently required under the EAR.

In adding this new paragraph b. to the Cryptography Note (Cat 5P2 Note 3) in the existing provisions of Cat 5P2, Note 3 become new paragraph a.

In terms of how these existing 'mass market' provisions are applied, paragraph 1 of the new Note to the Cryptography Note provides guidance on what it means for an item to be considered 'mass market' and 'generally available to the public'. This Note paragraph 1 makes it clear that in order

to meet the 'mass market' provisions of Cat 5P2 Note 3 paragraph a., the item must be of potential interest to a wide range of individuals and businesses, and potential customers do not need to specifically consult with a vendor or supplier to learn how much the item costs or what its main functional specifications are.

Paragraph 2. of the Note to the Cryptography Note also makes clear that in determining whether an item meets the 'mass market' qualifications of Note 3 paragraph a., relevant factors such as quantity, price, required technical skill, existing sales channels, typical customers, typical use, or any exclusionary practices of the supplier may be taken into account, in addition to other possible considerations.

The purpose of this new Note to the Cryptography Note is not to change the existing scope of control of the Cryptography Note, but to make current practices of interpretation more clear to the public.

Although the control text only mentions hardware components, the decontrol also applies to software components that are specially designed for a particular hardware component that has already been released from control.

For a component that meets new paragraph b. of the Cryptography Note 3 in Category 5 Part 2 of the Commerce Control List (Supplement No. 1 to part 774) that has previously been classified under ECCN 5A002 pursuant to § 740.17(b)(3), a new classification by BIS (i.e., a request for a CCATS) is not required to make the component eligible for mass market treatment under § 742.15(b)(3) and reclassified under ECCN 5A992. However, a reclassified component must be included in a self-classification report submitted to BIS and the ENC Encryption Request Coordinator no later than February 1 following the calendar year in which it is first exported or reexported as a mass market item (see § 742.15(c) for complete instructions on submitting encryption self-classification reports).

5A002 (''Information Security'' Systems, Equipment and Components Therefor)

The Related Controls paragraph in the List of Items Controlled Section is amended by redesignating paragraphs (1) and (2) as (2) and (3), and adding a new paragraph (1) to specify that 5A002.a controls ''components'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled within 5A002.a. Therefore, no analysis of the definition of ''specially designed'' is needed. BIS is making this change to clarify that no changes are made to how the U.S. Government currently interprets the scope of 5A002.a as a result of the implementation of the newly revised definition of ''specially designed.''

On June 19, 2012 (77 FR 36419), BIS published the advanced notice of proposed rulemaking (ANPRM) entitled ''Feasibility of Enumerating ''Specially Designed'' Components.'' In that ANPRM, BIS requested public comments to identify where on the CCL it was possible to replace the term ''specially designed'' with other control criteria. Category 5, Part 2 was identified by one commenter as a good candidate for enumerating ''components'' that warrant control. This commenter supported making 5A002.a into a positive list of ''components'' controlled for ''information security.'' The commenter indicated 5A002 is already more of an enumerated control versus a catch-all control and therefore the term ''specially designed'' was not needed. This new Note to paragraph a. is responsive to that comment and also consistent with the larger Export Control Reform (ECR) Initiative objective of making the CCL more ''positive.''

The addition of Note 1 to the Related Controls paragraph of 5A002 does not change the scope of the ECCN, but rather is limited to adding an explanatory note regarding the scope of ''components'' controlled under 5A002.a. Currently, the U.S. Government is working on a regime proposal to the Wassenaar Arrangement that would replace the term ''specially designed'' in 5A002.a with ''providing the means or functions necessary.'' This work is being undertaken by the U.S. Government to better reflect the intent of this control on ''components'' under 5A002.a and to better reflect how the U.S. Government currently interprets the scope of this control on ''components'' under 5A002.a.

The Note g. to the Items paragraph is also amended by replacing the reference to paragraphs .b to e. of the Cryptography Note (Note 3 in Category 5—Part 2) with paragraphs a.2. to a.5. of the Cryptography Note in order to harmonize with the changes made to the Cryptography Note.

The Note to the Items paragraph is amended by adding the phrase ''or not exceeding 100 meters according to the manufacturer's specifications for equipment that cannot interconnect with more than seven devices'' to the end of paragraph i. to raise the range, because there are many products on the market today that exceed this limitation. This revision will only decontrol such equipment that cannot interconnect with more than seven (7) devices (e.g., Bluetooth). If a type of Wireless Personal Area Network (WPAN) equipment can interconnect with more than seven devices, it continues to only be released by 5A002 Note i. if its nominal operating range does not exceed 30 meters.

In addition, the definition of ''personal area network,'' found in Part 772 of the EAR, is updated to account for this range increase in paragraph i. of the Note.

5A002.a.1 is amended by adding the phrase ''or execution of copy-protected ''software'' to the exclusion list in paragraph a.1, as well as Technical Note 1, to clarify that such items are still excluded from control. Prior to June 25, 2010, products with cryptographic functionality limited to copy protection (and other digital rights management (DRM) functionality) were originally decontrolled by decontrol Note c. to 5A002. When Note 4 to Category 5, Part 2 (Cat 5P2) was implemented on June 25, 2010, paragraph c. of the decontrol note to 5A002 was removed and a pointer (Nota Bene) to Cat 5P2 Note 4 was added to make clear that this decontrol was subsumed into Cat 5P2 Note 4. However, since then, exporters have been confused about how copy protection falls under Note 4. To make it clear that copy protection is not controlled in 5A002, this rule adds the phrase ''or execution of copy-protected software'' into the exclusion note. This does not change the scope of what is decontrolled, as Note 4 in Cat 5P2 remains unchanged and in full effect. By application of Note 4 in Cat 5P2 (especially paragraph a.3, regarding digital rights management (DRM)), copy protection and other DRM functionality is excluded from classification under Cat 5P2, even if the copy protection scheme (or other DRM) uses ''cryptography.'' Moreover, copy protection functionality is not specified for control in any CCL Category. Accordingly, EAR99 software with addition of cryptographic functionality limited to copy protection remains classified as EAR99.

A Note to 5A002.a.2 is added to clarify that 5A002.a.2 includes systems or equipment, designed or modified to perform cryptanalysis by means of reverse engineering.

5A002.a.7 (Non-cryptographic information and communications technology (ICT) security systems and devices) is amended by replacing the phrase ''evaluated to an assurance level exceeding'' with ''that have been

evaluated and certified by a national authority to exceed'' in order to clarify that the intent is to control only those items which have been evaluated against the applicable criteria and have subsequently received a certification from a national security authority attesting that the items exceed class EAL–6 (evaluation assurance level) of the Common Criteria (CC) or equivalent.

5A992 (Equipment not controlled by 5A002) is amended by adding a Note to paragraph .b of the Items paragraph in the List of Items Controlled section. The Note is added to clarify that 5A992 does not control products with cryptographic functionality limited to copy protection.

5E002 (''Technology'') is amended by adding a Note to clarify that ''5E002 includes ''information security'' technical data resulting from procedures carried out to evaluate or determine the implementation of functions, features or techniques specified in Category 5, Part 2''. The purpose of this Note is to clarify two things. First, that existing 5E002 controls on ''technology'' includes ''information security'' technical data that may be revealed or conveyed by the security evaluation of a product (e.g., for government or commercial certification purposes). Second, this Note is added to clarify that reverse engineering can be viewed as a form of product evaluation; consequently, 5E002 includes reverse engineering data and reports that detail the implementation of controlled ''information security'' functions, features or techniques by an item.

Category 6—Sensors and Lasers

6A001 (Acoustic Systems, Equipment and Components)

6A001.a.1.a.2 (Underwater survey equipment designed for seabed topographic mapping) is amended by replacing ''all'' with ''any'' and cascading the parameters in order to add a new control for additional survey equipment identified in 6A001.a.1.a.2.b. Note that the parameters for the previously controlled survey equipment, now in 6A001.a.1.a.2.a, remain unchanged.

6A001.a.1.a.2.b is added to control underwater survey equipment not specified by 6A001.a.1.a.2.a. A new Technical Note is added that states acoustic sensor pressure rating determines the depth rating in 6A001.a.1.a.2. Additionally, the existing Technical Note defining 'sounding rate' is modified to specify 100% coverage.

6A001.a.1.a.3 (Side Scan Sonar (SSS) or Synthetic Aperture Sonar (SAS), designed for seabed imaging) is amended by adding an 'along track resolution' parameter to a revised a.1.a.3.b and moving the 'across track resolution' parameter in paragraph a.1.a.3.b to new paragraph a.1.a.3.c. Editorial revisions are made to the Technical Notes as well.

6A002 (Optical Sensors or Equipment And Components Therefor) is amended by replacing the periods with semi-colons at the end of paragraphs a.3.a.2.b, a.3.b.2.b, a.3.g.3 and c.3 in the Items paragraph of the List of Items Controlled section to correct the punctuation. In addition, 6A002.a.3.d.2.b is amended by removing ''(SPRITE),'' because the SPRITE is no longer in production and the performance of the detector and the sensors it was integrated into has been surpassed by more modern Focal Plane Array (FPA) developments. The word ''detector'' is added before element. ''Element'' is made plural. Capital letters PR, I, T and E, are all replaced by lower case letters.

6A005 (''Lasers'' (Other Than Those Described in 0B001.g.5 or .h.6), Components and Optical Equipment)

Paragraphs a.2, a.3, b.2, and b.3 in the Items paragraph of the List of Items Controlled are amended by replacing ''520'' with ''510.'' Frequency-doubled Yb:YAG lasers using second harmonic generation (SHG) emit green light at 515 nm. These lasers are increasingly being used in commercial laser materials processing, replacing Nd:YAG lasers. Given the development of this application, it was determined appropriate to change the wavelength from ''520'' to ''510'' in 6A005.a.3 and 6A005.b.3, to control Yb:YAG SHG lasers at the same power level as Nd:YAG SHG lasers. The change to a.2 and b.2 accounts for the shift in wavelength in a.3 and b.3 so a gap in control was not created. As a result of this change the NP controls are expanded to include 6A005.a.3 and all of b.3, instead of just b.3.a. 6A005.a.3 is added to paragraph (d) of the License Requirements Note, which outlines NP controls.

6A005.a.6.a (Non-''tunable'' continuous wave ''(CW) lasers'') is amended by removing paragraphs a.6.a.1 and a.6.a.2 to simplify the control text. The output power control level of 150 W is replaced with 200 W to adjust for technical advancements.

6C004 (Optical Materials)

6C004.b (Electro-optic materials and non-linear optical materials) and .c (Non-linear optical materials, other than those specified by 6C004.b) are amended in order to control new materials that can be used in military applications. Advances in crystal growth have facilitated the manufacturing of additional non-linear optical materials. The new citations identify specific materials by name or using the updated parameters under 6C004.c.3 and c.4 that can be fabricated into non-linear optical components. These non-linear crystals have recently become useful due to advances in manufacturing. They can now be grown large enough and with low defects so that they can be cut and polished into optical components. The newly listed materials are of interest because they can operate at high optical powers that cause other non-linear materials to degrade.

6C005 (Synthetic crystalline ''laser'' host material in unfinished form) is amended by removing 6C005.b (Alexandrite) and reserving the paragraph, because Alexandrite lasers are tuneable from 700 to 800 nm and the majority of applications for alexandrite lasers are for dermatology and hair removal.

Category 7—Navigation and Avionics

7A001 (Accelerometers) is amended by replacing the ''bias'' ''repeatability'' of less (better) than 5,000 micro g with 1,250 micro g in paragraph a.2.a and replacing the ''scale factor'' ''repeatability'' of less (better) than 2,500 ppm with 1,250 ppm in paragraph a.2.b, because improvements in Microelectromechanical Systems (MEMS) technology have led to availability of equivalent performance accelerometers in commercial products, as well as widespread foreign availability.

7D003 (''Software'')

The License Exception STA ineligibility paragraph is amended by removing the phrase ''d.1 to d.4 or d.7'' because these controls have been moved to a new ECCN 7D004, and paragraph 7D003.d is removed and reserved by this rule. Specifically, these controls are moved to7D004.a to .g, with the exception of 7D003.d.5 (Airborne automatic direction finding equipment). 7D003.d.5 is removed and reserved as reflected in the new paragraph 7D004.e, because there was no reason for this relatively rudimentary item to be identified separately from other navigation entries. Because the ''source code'' in 7D003.d is already addressed elsewhere more specifically, this entry created a redundancy in controls and is removed. For more details about the redundancy see the preamble text for 7D004 below.

A Nota Bene (N.B.) is added to reference the new location (7D004) for the control of 7D003.d source code.

7D004 (''Source code'' incorporating ''development'' ''technology'' specified by 7E004.a or 7E004.b) is added to the CCL to control ''source code'' moved from 7D003.d. Previously, two sets of technology controls addressed the flight controls topic. The first was 7E001, the GTN-based ''development'' technology controls relating to the 7D003 ''source code'' entry. The second set of technology controls are under 7E004.a and 7E004.b, which enumerate specific flight control technologies of concern. The existence of both sets of controls created an obviously undesirable redundancy. However, it was discovered that pertinent ''source code'' ''software'' and ''technology'' was removed from control by the WA agreement, which the U.S. will address with WA in future meetings to establish appropriate multi-lateral national security level controls. In the meantime, ''source code'' for the ''development'' of fly-by-wire control systems is added to 0D521 No. 2. The following technology is added to 0E521 No. 6: ''Technology'' for fly-by-wire control systems, as follows: a. ''Technology'' according to the General Technology Note for the ''development'' of ''software'' controlled by 0D521 No. 2; or b. ''Development'' ''technology'' for ''active flight control systems'' for control law compensation for sensor location or dynamic airframe loads, i.e., compensation for sensor vibration environment or for variation of sensor location from the center of gravity. (See Supplement No. 5 to part 774.) There is a pending rule that adds technology to 0E521 Nos. 2–5, therefore this rule reserves those paragraphs in the table.

As described in the final rule that established the 0Y521 series and that was published in the **Federal Register** on April 13, 2012 (77 FR 22191), items are added to the 0Y521 series upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, that the items should be controlled for export because the items provide at least a significant military or intelligence advantage to the United States or foreign policy reasons justify control. The ''source code'' for the ''development'' of fly-by-wire control systems in 0D521 No. 2 and the fly-by-wire technology in 0E521 No. 6 is controlled for regional stability (RS) Column 1 reasons. ECCN 0D521 and 0E521 items are subject to a nearly worldwide license requirement (i.e., for every country except Canada) with a case-by-case license review policy, through regional stability (RS Column 1) controls. Only License Exception GOV is available for this technology for official use by personnel and agencies of the U.S. Government.

If your fly-by-wire software or technology was controlled by 7D003 or 7E001 and is now classified as 0D521 No. 2 or 0E521 No. 6, then you do not need to replace your existing licenses or classifications (CCATS), because it is considered a ''non-material'' change pursuant to Section 750.7(c)(1)(viii) of the EAR. If you were going to request an extension for licenses with these ECCNs, you may still request extensions of these licenses instead of replacing them because of this ECCN change.

In order to maintain the more detailed descriptions of the specific flight control topics covered by 7E004.a and 7E004.b, WA agreed to remove the 7E001 reference to flight control ''source code''. This modification is accomplished by moving 7D003.d to 7D004, and removing 7D004 from 7E001 coverage. Reference language is added to the new 7D004 that points to the technology controls in 7E004.a and 7E004.b, as well as 0D521 No. 2 and 0E521 No. 6 for fly-by-wire source code and technology.

A new exclusion Note is added to 7D004 that states that ''7D004 does not apply to ''source code'' associated with common computer elements and utilities (e.g., input signal acquisition, output signal transmission, computer program and data loading, built-in test, task scheduling mechanisms) not providing a specific flight control system function,'' to clarify that the scope of these entries is limited to flight control system function.

7E001 (''Technology'' According to the GTN for the ''Development'' of 7A, 7B or 7D)

The Header is amended to specify the three software ECCNs 7D001, 7D002, and 7D003, in order to remove the new 7D004 from the scope of 7E001, which was created to control flight control ''source code'' in one place instead of in 7D003 and 7E001. The Related Controls paragraph is amended by adding a reference to 0D521 No. 2 for ''source code'' for the ''development'' of fly-by-wire control systems and 0E521 No. 6 for ''technology'' for the ''development'' of fly-by-wire control systems. See explanation for the creation of 0D521 No. 2 and 0E521 No. 6 under 7D004 in the preamble of this rule.

7E004 (Other ''technology'')

The Related Controls paragraph in the List of Items Controlled section is amended to add references to 0D521 No. 2 (''source code'' for the ''development'' of fly-by-wire control systems), and 0E521 No. 6 (for ''technology'' for the ''development'' of ''software'' controlled by 0D521 No. 2).

7E004.b (''Development'' ''technology'', as specified, for ''active flight control systems'' (including fly-by-wire or fly-by-light)) is amended to more specifically list photonic technology of concern by providing descriptions to positively identify the critical photonic functions in a fly-by-light system.

7E004.b.1 is replaced, because the technology for interconnecting multiple microelectronic processing elements, such as microprocessors, in order to speed up processing is now widely available. In addition, active flight control solutions today can easily run in real-time on a single processor. 7E004.b.1 now controls fly-by-light technology. Photonics-based flight control systems, or ''fly-by-light'', are in development to provide a number of system-level benefits, including tolerance of elevated Electro-Magnetic Interference (EMI) and reduced systems volume and weight.

7E004.b.2 is removed and reserved, because control law compensation technology as described at the general level is now widely available.

7E004.b.3 is revised, because the former text for 7E004.b.3 dealt with fault detection, isolation, tolerance, and resolution (i.e., ''reconfiguration''). The only technique implied by the text is ''redundancy'', which was too broad and could encompass technology that is widely understood and employed. The revised 7E004.b.3 text updates the fault detection and isolation aspects to a more appropriate characterization of the emerging technology for protection-predictive diagnosis. This technology can determine the onset of a future failure for more preemptive mitigation actions.

7E004.b.4 (''active flight control system'' technology) is revised, because it was outdated. The revised text links the real-time identification of component failures, and allows for mitigation during degradations prior to full failure. These linked 7E004.b.3 and 7E004.b.4 updates better represent the emerging state-of-the-art technologies with emphasis on preemption and mitigation capabilities.

Note to 7E004.b.4 and Note to 7E004.b are added and the Note to 7E004.b.3 is revised to clarify that the scope of these entries is limited to flight control system function. The Note to 7E004.b.5 is changed to conform to the WA text.

Category 9—Aerospace and Propulsion

9A001 (Aero gas turbine engines) is amended by replacing the phrase ''Participating State'' with ''Wassenaar

Arrangement Participating State'' in the introductory text of paragraph .a and .b in Note 9A001.a of the Items paragraph in the List of Items Controlled section, because there is currently no definition for this term in the EAR. However, it is understood that it refers to members of the Wassenaar Arrangement.

9A018 (Equipment on the Wassenaar Arrangement Munitions List)

ECCN 9A018 is amended by revising the List of Items Controlled section. 9A018.b is amended to implement the WA agreements for 2012 to ML6 on the WA Munitions List. Paragraph 9A018.b is separated into two parts. 9A018.b.1 covers ground transport vehicles (including trailers) and parts and components therefor designed and modified for non-combat military use. 9A018.b.2 is the modified portion of the former 9A018.b, which covers other ground vehicles. Also, a Note is added to exclude vehicles for transporting money or valuables. The revision clarifies that ''all-wheel drive'' vehicles have transmissions that supply drive to the front and rear wheels simultaneously even if the vehicle has other wheels that provide no driving force. The second change limits the scope of the paragraph to vehicles with a gross vehicle weight rating greater than 4,500 kilograms. The third change replaces the term ''capable of off road use'' with the term ''designed or modified for off road use.'' The fourth change is that ''components'' are separated out from the vehicles and placed in 9A018.b.2 with parameters.

9E003 (Other ''Technology'')

9E003.a.5 (Cooled turbine blades, vanes or ''tip-shrouds'') is amended by increasing the gas path temperature from 1643K (1370 °C) to 1693 K (1420 °C), because as the material development for airfoils has reached a steady state, increases in higher ''combustor exit temperature'' can only come from advanced airfoil cooling. Taking note of the higher combustor exit temperature for 9E003.a.2 that was implemented in 2012, it then follows to increase the limiting temperatures for cooled turbine blades, vanes and ''tip-shrouds'' in 9E003.a.5.

A Technical Note is added to define 'gas path temperature' as this term is used in the newly revised 9E003.a.5 parameter.

9E003.h.3 is amended by replacing the period with a semi-colon.

Supplement No. 1 to Part 774 (the Commerce Control List), Supplement No. 2 ''General Technology and Software Notes''

The ''General Software Note'' (GSN) is amended by adding some provisions that align with what WA Participating States have already been doing. While WA implements the GSN as a decontrol note, the U.S. implements it as criteria for License Exception TSU and a cross reference to § 740.13 is included. Additionally, paragraph 2 of the GSN that refers to ''in the public domain,'' is replaced with a reference to Section 734.3(b)(3) for regulations that set forth provisions for ''publicly available technology and software.''

Paragraph 3 of the GSN sets forth the provision to cover minimum necessary ''software'' for the installation, operation, maintenance (checking) or repair of authorized equipment. It was decided to add ''object code'' to make sure that ''source code'' is not released by the GSN. Also a Note was included to clarify that the minimum necessary ''object code'' is not software that can enhance or improve the performance of an item or provide new features or functionality. The GSN does not apply to ''software'' controlled by Category 5 Part 2 ''Information Security,'' instead a similar note addresses such ''software'' in Note 3 to Category 5 Part 2 ''Cryptography Note.''

Supplement No. 5 to Part 774 (Items Classified Under ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521)

This rule revises section 0D521 and 0E521 of Supplement No. 5 to part 774 to add two new entries 0D521 No. 2 and 0E521 No. 6. The explanation for these additions is found under 7D004 in the preamble of this rule.

Supplement No. 1 to § 740.11 (Additional restrictions on use of license Exception GOV) is amended by removing the phrase ''radio frequency (RF) transmitting equipment'' and adding in its place ''Counter Improvised Explosive Device (IED) equipment and related equipment'' in two places in paragraph (a)(1)(vii)(C) and in two places in paragraph (b)(1)(vii)(C), because the scope of 5A001.h is expanded to control more equipment.

Part 742 (Control Policy—CCL Based Controls)

Section 742.15 (Encryption Items) is amended by revising paragraph (d). This rule adds paragraph (d)(2) to grandfather classification requests and encryption registrations submitted after June 15, 2010 for components that received a classification of 5X002 § 742.17(b)(3) and that meet the newly added paragraph (b) of the Cryptography Note 3 in Category 5 Part 2 of the Commerce Control List in Supplement No. 1 to part 774, if you include these components in your self-classification report.

Part 743 Special Reporting

WA has three levels of controls as reflected in its Basic List (BL), Sensitive List (SL), and Very Sensitive List (VSL). BIS makes certain items on the WA BL and SL eligible for license exceptions. Because of the U.S. obligations under its agreements to the WA, the United States must report on SL items exported outside of the WA membership countries. BIS does this by gathering data from its licensing database. To collect data on exports made under license exceptions, BIS requires WA reporting on SL items exported (excluding deemed exports) under License Exceptions GBS, CIV, TSR, LVS, APP, STA, and portions of GOV. As a result of WA making changes to its SL, this rule makes corresponding changes to the reporting requirements of section 743.1 of the EAR.

The Note to Section 743.1(c)(1)(ii) is simplified by combining the list of software and technology that require WA reporting under ECCNs 2D001, 2E001 and 2E002, as well as harmonizing these requirements with the changes made to the WA Sensitive List.

Part 770 Interpretations

Section 770.2 is amended by revising paragraph (h) ''Ground Vehicles'' to harmonize with changes WA made to ML 6. WA changed ML 6 to clarify the scope of ML 6 by adding three specific parameter paragraphs to distinguish military vehicles from commercial vehicles used for security.

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR)

The definition for ''diffusion bonding'' is amended by removing the word ''molecular'', replacing the phrase ''two separate metals'' with ''two separate pieces of metals'', and adding a phrase ''wherein the principal mechanism is interdiffusion of atoms across the interface'' to the end of the definition. It was inappropriate to use the term ''molecular'' in describing metallic bonds, because molecules do not exist in solid-state metals. In addition, to achieve diffusion bonding, interdiffusion of at least two separate atoms of metals across the interface must occur. Then, through the diffusion bonding, the atoms are joined into

diffusion bonded metals (metallic bonds).

The definition for ''dynamic signal analyzers'' is removed from § 772.1. The existing controls on Dynamic Signal Analyzers are commonly interpreted to require both phase and amplitude at the output. By deleting the concept of ''Dynamic Signal Analyzer'' and replacing it with ''Signal Analyzer'' the requirement that both phase and amplitude be in the output is removed.

The definition for ''frequency mask trigger'' is added to define pulse equipment (3A002.c.5) that allows the detection and processing of unknown short duration, transient, sporadic, and burst RF signals.

The definition for ''object code'' is amended by replacing ''(Cat 9)'' with ''(GSN)'' because this term is not used in Cat 9 and it is now used in the General Software Note to make sure that the GSN only covers object code and not source code.

The definition for ''personal area network'' is amended by adding the phrase ''and their nearby surrounding spaces'' to harmonize with the range increase included in the 5A002 exclusion Note .i limits (not exceeding 100 meters).

The definition for ''real-time bandwidth'' is revised to better define the concept of gap-free analysis of the input data, and to assure that the scope of control remains focused on what ''signal analyzers'' was intended to control.

The definition for ''space-qualified'' is amended by removing the reference to Cat 8, because Cat 8 no longer has ''space-qualified'' equipment. The revision of the text was to clarify the definition and close a loophole.

The definition for ''substrate blanks'' is amended by replacing ''Cat 6'' with ''Cat 3 and 6,'' because this term is now used in 3B001.h.1 to control multi-layer masks with a phase shift layer.

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 15, 2012, 77 FR 49699 (August 16, 2012) 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.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on June 20, 2013, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before August 19, 2013. Any such items not actually exported before midnight, on August 19, 2013, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by email at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 41 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached at the December 2012 plenary session of the WA. Because the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the WA to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by WA members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30-day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the WA in a timely manner and would injure the credibility of the United States in this and other multilateral regimes.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be

given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave. NW., Room 2099, Washington, DC 20230.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Parts 740 and 752

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Parts 770 and 772

Exports.

Accordingly, Parts 738, 740, 742, 743, 746, 752, 770, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 738 [AMENDED]

■ 1. The authority citation for Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 2. Section 738.3 is amended by revising paragraph (a)(1) to read as follows:

§ 738.3 Commerce Country Chart structure.

(a) * * *

(1) ECCNs 0A983, 5A001.f.1, 5A980, 5D001 (for 5A001.f.1, or for 5E001.a (for 5A001.f.1 or for 5D001.a (for 5A001.f.1))), 5D980, 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) and 5E980. A license is required for all destinations for items controlled under these entries. For items controlled by 0A983, 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) and 5E980, no license exceptions apply. For items controlled by 5A001.f.1, 5A980, 5D001 (for 5A001.f.1 or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1))) and 5D980, License Exception GOV may apply if your item is consigned to and for the official use of an agency of the U.S. Government (see § 740.2(a)(3)). If your item is controlled by 0A983, 5A001.f.1, 5A980, 5D001 (for 5A001.f.1 or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1))), 5D980, 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) or 5E980 you should proceed directly to Part 748 of the EAR for license application instructions and §§ 742.11 or 742.13 of the EAR for information on the licensing policy relevant to these types of applications.

* * * * *

PART 740 [AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 4. Section 740.2 is amended by revising paragraph (a)(3) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(3) The item is primarily useful for surreptitious interception of wire, oral, or electronic communications, or related software, controlled under ECCNs 5A001.,f.1 5A980, 5D001 (for 5A001.f.1 or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1))), or 5D980, unless the item is consigned to and for the official use of an agency of the U.S. Government (see § 740.11(b)(2)(ii) of this part, Governments (GOV)). No license exceptions apply for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) or for 5E980.

* * * * *

§ 740.11 [Amended]

■ 5. Supplement No. 1 to § 740.11 is amended by removing the phrase ''radio frequency (RF) transmitting equipment'' and adding in its place ''Counter Improvised Explosive Device (IED) equipment and related equipment'' in two places in paragraph (a)(1)(vii)(C) and in two places in paragraph (b)(1)(vii)(C).

PART 742 [AMENDED]

■ 6. The authority citation for Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 7. Section 742.13 is amended by revising paragraph (a)(1) to read as follows:

§ 742.13 Communications intercepting devices; software and technology for communications intercepting devices.

(a) *License requirement.* (1) In support of U.S. foreign policy to prohibit the export of items that may be used for the surreptitious interception of wire, oral, or electronic communications, a license is required for all destinations, including Canada, for ECCNs having an ''SL'' under the ''Reason for Control'' paragraph. These items include any electronic, mechanical, or other device primarily useful for the surreptitious interception of wire, oral, or electronic communications (ECCNs 5A001.f.1 and 5A980); and for related ''software'' primarily useful for the surreptitious interception of wire, oral, or electronic communications (ECCN 5D001.c and 5D980.a); and ''software'' primarily useful for the ''development'', ''production'', or ''use'' of devices controlled under ECCNs 5A001.f.1 and 5A980 (ECCNs 5D001.a and 5D980.b); and for ''technology'' primarily useful for the ''development'', ''production'', or ''use'' of items controlled by ECCNs 5A001.f.1, 5D001.a (for 5A001.f.1), 5A980 and 5D980 (ECCNs 5E001.a and 5E980); and for ''software'' primarily useful to support such ECCN 5E001.a ''development'', ''production'', or ''use'' ''technology'' for 5A001.f.1 equipment and certain 5D001.a ''software'' (ECCN 5D001.b). These licensing requirements

do not supersede the requirements contained in the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. 2512). This license requirement is not reflected on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).

* * * * *

■ 8. Section 742.15 is amended by revising paragraph (d) to read as follows:

§ 742.15 Encryption items.

* * * * *

(d) *Grandfathering.* (1) For mass market encryption commodities, software and components described in (or otherwise meeting the specifications of) paragraph (b) of this section effective June 25, 2010, such items reviewed and classified by BIS as mass market products prior to June 25, 2010 are authorized for export and reexport under paragraph (b) of this section using the CCATS previously issued by BIS, without any encryption registration (i.e., the information described in Supplement No. 5 to this part), new classification by BIS, or self-classification reporting (i.e., the information described in Supplement No. 8 to this part), provided the cryptographic functionality of the item has not changed. See paragraph (b)(7)(i)(C) of this section regarding changes in encryption functionality following a previous classification.

(2) If you have components that meet paragraph (b) of the Cryptography Note 3 in Category 5 Part 2 of the Commerce Control List in Supplement No. 1 to part 774 and the components have previously been classified under ECCN 5X002 pursuant to § 740.17(b)(3) or self-classified under § 740.17(b)(1) after June 25, 2010, a new classification request is not required to make it eligible for paragraph (b) to Note 3 under § 742.15(b)(3), i.e., 5X992, if you include these components in your self-classification report submitted to BIS and the ENC Encryption Request Coordinator no later than February 1 following the calendar year in which you first export or reexport the reclassified components.

PART 743 [AMENDED]

■ 9. The authority citation for 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); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 10. Section 743.1 is amended by revising the Note to paragraph (c)(1)(ii) to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

Note to Paragraph (c)(1)(ii): *Reports for 2D001, 2E001 and 2E002* are for equipment as follows:

a. Machine tools for turning having all of the following:

1. Positioning accuracy with ''all compensations available'' equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

2. Two or more axes which can be coordinated simultaneously for ''contouring control''.

b. Machine tools for milling having any of the following:

1. Having all of the following:

i. Positioning accuracy with ''all compensations available'' equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; and

ii. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

2. Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a positioning accuracy with ''all compensations available'' equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; or

3. A positioning accuracy for jig boring machines, with ''all compensations available'', equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along one or more linear axis;

c. Electrical discharge machines (EDM) as specified in 2B001.d.

d. Deep-hole-drilling machines as specified in 2B001.f.

e. ''Numerically controlled'' or manual machine tools as specified in 2B003.

* * * * *

PART 746 [AMENDED]

■ 11. The authority citation for Part 746 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. 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, 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 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 12. Section 746.7 is amended by revising paragraph (a)(1) to read as follows:

§ 746.7 Iran.

* * * * *

(a) *License Requirements*—(1) *EAR license requirements.* A license is required under the EAR to export or reexport to Iran any item on the CCL containing a CB Column 1, CB Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3, AT Column 1 or AT Column 2 in the Country Chart Column of the License Requirements section of an ECCN or classified under ECCNs 0A980, 0A982, 0A983, 0A985, 0E982, 1C355, 1C395, 1C980, 1C981, 1C982, 1C983, 1C984, 2A994, 2D994, 2E994, 5A001.f.1, 5A980, 5D001 (for 5A001.f.1or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1))), 5D980, 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) or 5E980.

* * * * *

PART 752 [AMENDED]

■ 13. The authority citation for Part 752 continues 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 15, 2012, 77 FR 49699 (August 16, 2012).

■ 14. Section 752.3 is amended by revising paragraph (a)(7) to read as follows:

§ 752.3 Eligible items.

(a) * * *

(7) Communications intercepting devices and related software and technology controlled by ECCNs 5A001.f.1, 5A980, 5D001 (for 5A001.f.1 or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1))), 5D980, 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) or 5E980 on the CCL;

* * * * *

PART 770 [AMENDED]

■ 15. The authority citation for Part 770 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 15, 2012, 77 FR 49699 (August 16, 2012).

■ 16. Section 770.2 is amended by revising paragraph (h) to read as follows:

§ 770.2 Item Interpretations.

* * * * *

(h) *Interpretation 8: Ground vehicles.* (1) The U.S. Department of Commerce, Bureau of Industry and Security has export licensing jurisdiction over ground transport vehicles (including trailers), parts, and components therefor specially designed or modified for non-combat military use. Vehicles in this category are primarily transport vehicles designed or modified for transporting cargo, personnel and/or equipment, or to move other vehicles and equipment over land and roads in close support of fighting vehicles and troops. The U.S. Department of Commerce, Bureau of Industry and Security also has export licensing jurisdiction over vehicles specified in 9A018.b.2, if they do not have armor described in 22 CFR 121, Category XIII. In this section, and in ECCN 9A018, the word ''unarmed'' means not having weapons installed, not having mountings for weapons installed, and not having special reinforcements for mountings for weapons.

(2) Modification of a ground vehicle for military use entails a structural, electrical or mechanical change involving one or more specially designed military components. Such components include, but are not limited to:

(i) Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;

(ii) Tire inflation pressure control systems, operated from inside a moving vehicle;

(iii) Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs); and

(iv) Special reinforcements for mountings for weapons.

(3) Scope of ECCN 9A018.b: Ground transport vehicles (including trailers) and parts and components therefor specially designed or modified for non-combat military use are controlled by ECCN 9A018.b.1. Unarmed vehicles specified in 9A018.b.2 that are not described in paragraph (h)(4) of this section. ECCN 9A018.b does not cover civil vehicles designed or modified for transporting money or valuables even if such vehicles incorporate items described in paragraphs (h)(2)(i), (ii), or (iii) of this section. Ground vehicles that are not described in paragraph (h)(4) of this section and that are not covered by either ECCN 9A018.b or 9A990 are EAR99, meaning that they are subject to the EAR, but not listed in any specific ECCN.

(4) Related control: The Department of State, Directorate of Defense Trade Controls has export licensing jurisdiction for all military ground armed or armored vehicles and parts and components specific thereto as described in 22 CFR part 121, Category VII. The Department of State, Directorate of Defense Trade Controls also has export licensing jurisdiction for all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR part 121.

* * * * *

PART 772 [AMENDED]

■ 17. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 18. Section 772.1 is amended by:

■ a. Revising the definitions for ''diffusion bonding,'' ''personal area network,'' ''real-time bandwidth,'' ''space-qualified'';

■ b. Removing the definition ''dynamic signal analyzers;''

■ c. Adding a definition for ''frequency mask trigger'';

■ d. Removing ''(Cat 9)'' and adding in its place ''(GSN)'' in the definition of ''object code;'' and

■ e. Removing ''(Cat 6)'' and adding in its place ''(Cat 3 and 6)'' in the definition of ''substrate blanks''.

The revisions and addition read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Diffusion bonding. (Cat 1, 2, and 9)—A solid state joining of at least two separate pieces of metals into a single piece with a joint strength equivalent to that of the weakest material, wherein the principal mechanism is interdiffusion of atoms across the interface.

* * * * *

Frequency mask trigger. (Cat 3)—For ''signal analyzers'' a mechanism where the trigger function is able to select a frequency range to be triggered on as a subset of the acquisition bandwidth while ignoring other signals that may also be present within the same acquisition bandwidth. A ''frequency mask trigger'' may contain more than one independent set of limits.

* * * * *

Personal area network. (Cat 5 Part 2)—A data communication system having all of the following characteristics:

(a) Allows an arbitrary number of independent or interconnected 'data devices' to communicate directly with each other; and

(b) Is confined to the communication between devices within the immediate vicinity of an individual person or device controller (e.g., single room, office, or automobile, and their nearby surrounding spaces).

Technical Note: 'Data device' means equipment capable of transmitting or receiving sequences of digital information.

* * * * *

Real time bandwidth. (Cat 3)—For ''signal analyzers'', the widest frequency range for which the analyzer can continuously transform time domain data entirely into frequency-domain results, using Fourier or other discrete time transform that processes every incoming time point without gaps or windowing effects that causes a reduction of measured amplitude of more than 3 dB below the actual signal amplitude, while outputting or displaying the transformed data.

* * * * *

Space-qualified. (Cat 3 and 6)—Designed, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth.

Note: A determination that a specific item is ''space qualified'' by virtue of testing does not mean that other items in the same production run or model series are ''space qualified'' if not individually tested.

* * * * *

PART 774 [AMENDED]

■ 19. The authority citation for Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 20. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A004 is amended by:

■ a. Revising the introductory paragraph .a of the Items paragraph in the List of Items Controlled section; and

■ b. Revising the Note at the end of the Items paragraph in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1A004 Protective and detection equipment and components, not specially designed

for military use, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Full face masks, filter canisters and decontamination equipment therefor, designed or modified for defense against any of the following, and specially designed components therefor:

Note: *1A004.a includes Powered Air Purifying Respirators (PAPR) that are designed or modified for defense against agents or materials, listed in 1A004.a.*

Technical Note: *For the purpose of 1A004.a, full face masks are also known as gas masks.*

* * * * *

Note: *1A004 does not control:*

a. Personal radiation monitoring dosimeters;

b. Occupational health or safety equipment limited by design or function to protect against hazards specific to residential safety or civil industries, including:

1. Mining;
2. Quarrying;
3. Agriculture;
4. Pharmaceutical;
5. Medical;
6. Veterinary;
7. Environmental;
8. Waste management;
9. Food industry.

* * * * *

■ 21. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C001 is amended by revising paragraphs .b and .c in the Items paragraph of the List of Items Controlled section to read as follows:

1C001 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Materials for absorbing frequencies exceeding 1.5×10^{14} Hz but less than 3.7×10^{14} Hz and not transparent to visible light;

Note: *1C001.b does not apply to materials, specially designed or formulated for any of the following applications:*

a. Laser marking of polymers; or

b. Laser welding of polymers.

c. Intrinsically conductive polymeric materials with a 'bulk electrical conductivity' exceeding 10,000 S/m (Siemens per meter) or a 'sheet (surface) resistivity' of less than 100 ohms/square, based on any of the following polymers:

c.1. Polyaniline;
c.2. Polypyrrole;
c.3. Polythiophene;
c.4. Poly phenylene-vinylene; *or*
c.5. Poly thienylene-vinylene.

Note: *1C001.c does not apply to materials in a liquid form.*

Technical Note: *'Bulk electrical conductivity' and 'sheet (surface) resistivity' should be determined using ASTM D–257 or national equivalents.*

■ 22. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B001 is amended by:

■ a. Revising the Header;

■ b. Revising the Unit paragraph in the List of Items Controlled section;

■ c. Revising Note 2 of the Items paragraph in the List of Items Controlled section;

■ d. Revising paragraphs .a.1, .b, and .f in the Items paragraph in the List of Items Controlled section, to read as follows:

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or ''composites'', which, according to the manufacturer's technical specifications, can be equipped with electronic devices for ''numerical control''; as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Machine tools in number

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

Note 2: *2B001 does not control special purpose machine tools limited to the manufacture of any of the following:*

a. Crank shafts or cam shafts;

b. Tools or cutters;

c. Extruder worms;

d. Engraved or faceted jewelry parts; or

e. Dental prostheses.

* * * * *

a. * * *

a.1. Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 µm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; *and*

* * * * *

b. Machine tools for milling having any of the following:

b.1. Having all of the following:

b.1.a. Positioning accuracy with ''all compensations available'' equal to or less (better) than 3 µm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; *and*

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

b.2. Five or more axes which can be coordinated simultaneously for ''contouring control'' having any of the following:

Note: *'Parallel mechanism machine tools' are specified by 2B001.b.2.d.*

b.2.a. Positioning accuracy with ''all compensations available'' equal to or less (better) than 3.0 µm according to ISO 230/2 (2006) or national equivalents along one or more linear axis with a travel length less than 1 m;

b.2.b. Positioning accuracy with ''all compensations available'' equal to or less (better) than 4.5 µm according to ISO 230/2 (2006) or national equivalents along one or more linear axis with a travel length equal to or greater than 1 m and less than 2 m;

b.2.c. Positioning accuracy with ''all compensations available'' equal to or less (better) than 4.5 + 7x(L–2) µm (L is the travel length in meters) according to ISO 230/2 (2006) or national equivalents along one or more linear axis with a travel length equal to or greater than 2 m; *or*

b.2.d. Being a 'parallel mechanism machine tool';

Technical Note: *A 'parallel mechanism machine tool' is a machine tool having multiple rods which are linked with a platform and actuators; each of the actuators operates the respective rod simultaneously and independently.*

b.3. A positioning accuracy for jig boring machines, with ''all compensations available'', equal to or less (better) than 3.0 µm according to ISO 230/2 (2006) or national equivalents along one or more linear axis; *or*

b.4. Fly cutting machines having all of the following:

b.4.a. Spindle ''run-out'' and ''camming'' less (better) than 0.0004 mm TIR; *and*

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel;

* * * * *

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5 m.

■ 23. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B006 is amended by revising paragraph .b and .c in the Items paragraph of the List of Items Controlled section, to read as follows:

2B006 Dimensional inspection or measuring systems, equipment, and ''electronic assemblies'', as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Linear and angular displacement measuring instruments, as follows:

b.1. 'Linear displacement' measuring instruments having any of the following:

Note: *Displacement measuring ''laser'' interferometers are only specified by 2B006.b.1.c.*

Technical Note: *For the purpose of 2B006.b.1 'linear displacement' means the change of distance between the measuring probe and the measured object.*

b.1.a. Non-contact type measuring systems with a ''resolution'' equal to or less (better) than 0.2 µm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following:

b.1.b.1. ''Linearity'' equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K;

b.1.c. Measuring systems having all of the following:

b.1.c.1. Containing a ''laser''; *and*

b.1.c.2. Maintaining, for at least 12 hours, at a temperature of 20 ± 1 °C, all of the following:

b.1.c.2.a. A ''resolution'' over their full scale of 0.1 µm or less (better); *and*

b.1.c.2.b. Capable of achieving a ''measurement uncertainty'', when compensated for the refractive index of air, equal to or less (better) than (0.2 + L/2,000) µm (L is the measured length in mm); or

b.1.d. ''Electronic assemblies'' specially designed to provide feedback capability in systems controlled by 2B006.b.1.c;

Note: *2B006.b.1 does not control measuring interferometer systems, with an automatic control system that is designed to use no feedback techniques, containing a ''laser'' to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.*

b.2. Angular displacement measuring instruments having an ''angular position deviation'' equal to or less (better) than 0.00025°;

Note: *2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light (e.g., laser light) to detect angular displacement of a mirror.*

c. Equipment for measuring surface roughness (including surface defects), by measuring optical scatter with a sensitivity of 0.5 nm or less (better).

Note: *2B006 includes machine tools, other than those specified by 2B001, that can be used as measuring machines, if they meet or exceed the criteria specified for the measuring machine function.*

■ 24. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2D001 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section, to read as follows:

2D001 ''Software'', other than that controlled by 2D002, as follows (See list of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. ''Software'' specially designed or modified for the ''development'' or ''production'' of equipment controlled by 2A001 or 2B001 to 2B009;

b. ''Software'' specially designed or modified for the ''use'' of equipment specified by 2A001.c., 2B001, or 2B003 to 2B009.

Note: *2D001 does not apply to part programming ''software'' that generates ''numerical control'' codes for machining various parts.*

■ 25. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2D002 is amended by revising the Items paragraph of the List of Items Controlled section to read as follows:

2D002 ''Software'' for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a ''numerical control'' unit, capable of coordinating simultaneously more than 4 axes for ''contouring control''.

* * * * *

List of Items Controlled

* * * * *

Items:

Note 1: *2D002 does not control ''software'' specially designed or modified for the operation of machine tools not specified by Category 2.*

Note 2: *2D002 does not control ''software'' for items specified by 2B002. See 2D001 and 2D003 for ''software'' for items specified by 2B002.*

Note 3: *2D002 does not apply to ''software'' that is exported with, and the minimum necessary for the operation of, machine tools not specified by Category 2.*

The list of items controlled is contained in the ECCN heading.

■ 26. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2D003 is added after 2D002 to read as follows:

2D003 ''Software'', designed or modified for the operation of equipment specified by 2B002, that converts optical design, workpiece measurements and material removal functions into ''numerical control'' commands to achieve the desired workpiece form.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 2.
AT applies to entire entry.	AT Column 1.

License Exceptions

CIV: N/A

TSR: Yes

List of Items Controlled

Unit: $ value

Related Controls: See ECCN *2E001* (''development'') for technology for ''software'' controlled under this entry.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

■ 27. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3A001 is amended by revising paragraphs a.7, b.2, b.4.f.3, b.10, and b.11 in the Items paragraph of the List of Items Controlled section, to read as follows:

3A001 Electronic components and specially designed components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.7. 'Field programmable logic devices' having any of the following:

a.7.a. A maximum number of single-ended digital input/outputs of 500 or greater; *or*

a.7.b. An 'aggregate one-way peak serial transceiver data rate' or 200 Gb/s or greater;

Note: *3A001.a.7 includes:*

—*Simple Programmable Logic Devices (SPLDs)*

—*Complex Programmable Logic Devices (CPLDs)*

—*Field Programmable Gate Arrays (FPGAs)*

—*Field Programmable Logic Arrays (FPLAs)*

—*Field Programmable Interconnects (FPICs)*

Technical Notes:

1. 'Field programmable logic devices' are also known as field programmable gate or field programmable logic arrays.

2. Maximum number of digital input/outputs in 3A001.a.7.a is also referred to as maximum user input/outputs or maximum available input/outputs, whether the integrated circuit is packaged or bare die.

3. 'Aggregate one-way peak serial transceiver data rate' is the product of the peak serial one-way transceiver data rate times the number of transceivers on the FPGA.

* * * * *

b. * * *

b.2. Microwave ''Monolithic Integrated Circuits'' (MMIC) power amplifiers having any of the following:

b.2.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6.8 GHz and with an average output power greater than 4W (36 dBm) with a ''fractional bandwidth'' greater than 15%;

b.2.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz and with an average output power greater than 1W (30 dBm) with a ''fractional bandwidth'' greater than 10%;

b.2.c. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and with an average output power greater than 0.8W (29 dBm) with a ''fractional bandwidth'' greater than 10%;

b.2.d. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37 GHz and with an average output power greater than 0.1 nW (−70 dBm);

b.2.e. Rated for operation at frequencies exceeding 37 GHz up to and including 43.5 GHz and with an average output power greater than 1.0 W (30 dBm) ;

b.2.f. Rated for operation at frequencies exceeding 43.5 GHz up to and including 75 GHz and with an average output power greater than 31.62 mW (15 dBm) with a ''fractional bandwidth'' greater than 10%;

b.2.g. Rated for operation at frequencies exceeding 75 GHz up to and including 90 GHz and with an average output power greater than 10 mW (10 dBm) with a ''fractional bandwidth'' greater than 5%; *or*

b.2.h. Rated for operation at frequencies exceeding 90 GHz and with an average output power greater than 0.1 nW (−70 dBm).

Note 1: *[RESERVED]*

Note 2: *The control status of the MMIC whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.2.a through 3A001.b.2.f, is determined by the lowest average output power control threshold.*

Note 3: *Notes 1 and 2 following the Category 3 heading for product group A. Systems, Equipment, and Components mean that 3A001.b.2 does not control MMICs if they are specially designed for other applications, e.g., telecommunications, radar, automobiles.*

* * * * *

b.4. * * *

b.4.f. * * *

b.4.f.3. Any two sides perpendicular to one another with either length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [d ≤ 15 cm*GHz/f_{GHz}];

Technical Note: *3.2 GHz should be used as the lowest operating frequency (f_{GHz}) in the formula in 3A001.b.4.f.3., for amplifiers that have a rated operation range extending downward to 3.2 GHz and below [d≤15cm*GHz/3.2 GHz].*

N.B.: MMIC power amplifiers should be evaluated against the criteria in 3A001.b.2.

Note 1: *[RESERVED]*

Note 2: *The control status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.4.a through 3A001.b.4.e, is determined by the lowest average output power control threshold.*

Note 3: *3A001.b.4 includes transmit/receive modules and transmit modules.*

* * * * *

b.10. Oscillators or oscillator assemblies, specified to operate with all of the following:

b.10.a. A single sideband (SSB) phase noise, in dBc/Hz, better than −(126+20 $\log_{10}$F–20 $\log_{10}$f) anywhere within the range of 10 Hz <F<10 kHz; *and*

b.10.b. A single sideband (SSB) phase noise, in dBc/Hz, better than −(114+20 $\log_{10}$F–20 $\log_{10}$f) anywhere within the range of 10 kHz < F < 500 kHz;

Technical Note: *In 3A001.b.10, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.*

b.11. ''Frequency synthesizer'' ''electronic assemblies'' having a ''frequency switching time'' as specified by any of the following:

b.11.a. Less than 156 ps;

b.11.b. Less than 100 µs for any frequency change exceeding 1.6 GHz within the synthesized frequency range exceeding 4.8 GHz but not exceeding 10.6 GHz;

b.11.c. Less than 250 µs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 10.6 GHz but not exceeding 31.8 GHz;

b.11.d. Less than 500 µs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 31.8 GHz but not exceeding 43.5 GHz; *or*

b.11.e. Less than 1 ms for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 43.5 GHz but not exceeding 56 GHz;

b.11.f. Less than 1 ms for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 56 GHz but not exceeding 75 GHz; *or*

b.11.g. Less than 1 ms within the synthesized frequency range exceeding 75 GHz;

N.B.: For general purpose ''signal analyzers'', signal generators, network analyzers and microwave test receivers, see 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.

* * * * *

■ 28. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3A002 is amended by revising paragraphs .c, .d, .e, and .f in the Items paragraph of the List of Items Controlled section, to read as follows:

3A002 General purpose electronic equipment and accessories therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. Radio-frequency ''signal analyzers'' as follows:

c.1. ''Signal analyzers'' having a 3 dB resolution bandwidth (RBW) exceeding 10 MHz anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37.5 GHz;

c.2. ''Signal analyzers'' having Displayed Average Noise Level (DANL) less (better) than –150 dBm/Hz anywhere within the frequency range exceeding 43.5 GHz but not exceeding 75 GHz;

c.3. ''Signal analyzers''having a frequency exceeding 75 GHz;

c.4. ''Signal analyzers'' having all of the following:

c.4.a. ''Real-time bandwidth'' exceeding 85 MHz; *and*

c.4.b. 100% probability of discovery with less than a 3 dB reduction from full amplitude due to gaps or windowing effects of signals having a duration of 15 µs or less;

Note: *3A002.c.4 does not apply to those ''signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).*

Technical Notes:

1. Probability of discovery in 3A002.c.4.b is also referred to as probability of intercept or probability of capture.

2. For the purposes of 3A002.c.4.b, the duration for 100% probability of discovery is equivalent to the minimum signal duration necessary for the specified level measurement uncertainty.

c.5. ''Signal analyzers'' having a ''frequency mask trigger'' function with 100% probability of trigger (capture) for signals having a duration of 15 µs or less;

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master reference oscillator, and having any of the following:

d.1. Specified to generate pulses having all of the following, anywhere within the synthesized frequency range exceeding 31.8 GHz but not exceeding 75 GHz:

d.1.a. 'Pulse duration' of less than 100 ns; *and*

d.1.b. On/off ratio equal to or exceeding 65 dB;

d.2. An output power exceeding 100 mW (20 dBm) anywhere within the synthesized frequency range exceeding 43.5 GHz but not exceeding 75 GHz;

d.3. A ''frequency switching time'' as specified by any of the following:

d.3.a. [RESERVED];

d.3.b. Less than 100 µs for any frequency change exceeding 1.6 GHz within the synthesized frequency range exceeding 4.8 GHz but not exceeding 10.6 GHz;

d.3.c. Less than 250 µs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 10.6 GHz but not exceeding 31.8 GHz;

d.3.d. Less than 500 µs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 31.8 GHz but not exceeding 43.5 GHz;

d.3.e. Less than 1 ms for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 43.5 GHz but not exceeding 56 GHz; *or*

d.3.f. Less than 1 ms for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 56 GHz but not exceeding 75 GHz;

d.4. Single sideband (SSB) phase noise, in dBc/Hz, specified as being all of the following:

d.4.a. Less (better) than—(126+20 $\log_{10}$ F–20 $\log_{10}$f) for anywhere within the range of 10 Hz F<10 kHz anywhere within the synthesized frequency range exceeding 3.2 GHz but not exceeding 75 GHz; *and*

d.4.b. Less (better) than—(114+20 $\log_{10}$ F–20 $\log_{10}$f) for anywhere within the range of 10 kHz F< 500 kHz anywhere within the synthesized frequency range exceeding 3.2 GHz but not exceeding 75 GHz; *or*

Technical Note: *In 3A002.d.4, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.*

d.5. A maximum synthesized frequency exceeding 75 GHz;

Note 1: *For the purpose of 3A002.d, frequency synthesized signal generators include arbitrary waveform and function generators.*

Note 2: *3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.*

Technical Notes:

1. The maximum synthesized frequency of an arbitrary waveform or function generator is calculated by dividing the sample rate, in samples/second, by a factor of 2.5.

2. For the purposes of 3A002.d.1.a, 'pulse duration' is defined as the time interval between the leading edge of the pulse achieving 90% of the peak and the trailing edge of the pulse achieving 10% of the peak.

e. Network analyzers having any of the following:

e.1. An output power exceeding 31.62 mW (15 dBm) anywhere within the operating frequency range exceeding 43.5 GHz but not exceeding 75 GHz;

e.2. An output power exceeding 1 mW (0 dBm) anywhere within the operating

frequency range exceeding 75 GHz but not exceeding 110 GHz;

e.3. 'Nonlinear vector measurement functionality' at frequencies exceeding 50 GHz but not exceeding 110 GHz; *or*

Technical Note: *'Nonlinear vector measurement functionality' is an instrument's ability to analyze the test results of devices driven into the large-signal domain or the non-linear distortion range.*

e.4. A maximum operating frequency exceeding 110 GHz;

f. Microwave test receivers having all of the following:

f.1. Maximum operating frequency exceeding 110 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

* * * * *

■ 29. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3B001 is amended by revising paragraphs .a, .b and .h in the Items paragraphs of the List of Items Controlled section, to read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled) and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

a. Equipment designed for epitaxial growth as follows:

a.1. Equipment capable of producing a layer of any material other than silicon with a thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

Note: *3B001.a.1 includes atomic layer epitaxy (ALE) equipment.*

a.2. Metal Organic Chemical Vapor Deposition (MOCVD) reactors designed for compound semiconductor epitaxial growth of material having two or more of the following elements: aluminum, gallium, indium, arsenic, phosphorus, antimony, or nitrogen;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. Equipment designed for ion implantation and having any of the following:

b.1. [RESERVED];

b.2. Being designed and optimized to operate at a beam energy of 20 keV or more and a beam current of 10 mA or more for hydrogen, deuterium, or helium implant;

b.3. Direct write capability;

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material ''substrate''; *or*

b.5. Being designed and optimized to operate at beam energy of 20keV or more and a beam current of 10mA or more for silicon implant into a semiconductor material ''substrate'' heated to 600 °C or greater;

* * * * *

h. Multi-layer masks with a phase shift layer not specified by 3B001.g and having any of the following:

h.1. Made on a mask ''substrate blank'' from glass specified as having less than 7 nm/cm birefringence; *or*

h.2. Designed to be used by lithography equipment having a light source wavelength less than 245 nm;

Note: *3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.*

* * * * *

■ 30. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3C002 is amended by:

■ a. Revising the GBS and CIV paragraphs of the License Exceptions section; and

■ b. Revising the Related Definitions and Items paragraphs in the List of Items Controlled section, to read as follows:

3C002 Resist materials as follows (see List of Items Controlled) and ''substrates'' coated with the following resists.

* * * * *

License Exceptions

LVS: * * *

GBS: Yes for 3C002.a provided that they are not also controlled by 3C002.b through .e.

CIV: Yes for 3C002.a provided that they are not also controlled by 3C002.b through .e.

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: N/A

Items:

a. Resists designed for semiconductor lithography as follows:

a.1. Positive resists adjusted (optimized) for use at wavelengths less than 245 nm but equal to or greater than 15 nm;

a.2. Resists adjusted (optimized) for use at wavelengths less than 15 nm but greater than 1 nm;

b. All resists designed for use with electron beams or ion beams, with a sensitivity of 0.01 μcoulomb/mm^2 or better;

c. [RESERVED]

d. All resists optimized for surface imaging technologies;

e. All resists designed or optimized for use with imprint lithography equipment specified by 3B001.f.2 that use either a thermal or photo-curable process.

■ 31. Supplement No. 1 to Part 774 (the Commerce Control List), Category 4, ECCN 4D001 is amended by revising paragraph .a in the Items paragraph of the List of Items Controlled section, to read as follows:

4D001 ''Software'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. ''Software'' specially designed or modified for the ''development'' or ''production'', of equipment or ''software'' controlled by 4A001, 4A003, 4A004, or 4D (except 4D980, 4D993 or 4D994).

* * * * *

■ 32. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5A001 is amended by:

■ a. Revising the License Requirements section;

■ b. Revising the LVS paragraph in the License Exception section; and

■ c. Revising paragraphs .f, .h, and .i in the Items paragraph of the List of Items Controlled, to read as follows:

5A001 Telecommunications systems, equipment, components and accessories, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, SL, AT

Control(s)	*Country Chart*
NS applies to 5A001.a, .e, .b.5, f.3 and .h..	NS Column 1
NS applies to 5A001.b (except .b.5), .c, .d, .f (except f.3), and .g..	NS Column 2
SL applies to 5A001.f.1.	A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). **Note to SL paragraph:** *This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended.*
AT applies to entire entry.	AT Column 1

License Requirement Notes: *See § 743.1 of the EAR for reporting requirements for exports under License Exceptions. See § 740.2(a)(3) of the EAR for restrictions on the use of License Exceptions for 5A001.f.1.*

License Exceptions

LVS: N/A for 5A001.a, b.5, .e, f.3 and .h;

$5000 for 5A001.b.1, .b.2, .b.3, .b.6, .d, f.2, f.4, and .g;

$3000 for 5A001.c.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

f. Mobile telecommunications interception or jamming equipment, and monitoring equipment therefor, as follows, and specially designed components therefor:

f.1. Interception equipment designed for the extraction of voice or data, transmitted over the air interface;

f.2. Interception equipment not specified in 5A001.f.1, designed for the extraction of client device or subscriber identifiers (e.g., IMSI, TIMSI or IMEI), signaling, or other metadata transmitted over the air interface;

f.3. Jamming equipment specially designed or modified to intentionally and selectively interfere with, deny, inhibit, degrade or seduce mobile telecommunication services and performing any of the following:

f.3.a. Simulate the functions of Radio Access Network (RAN) equipment;

f.3.b. Detect and exploit specific characteristics of the mobile telecommunications protocol employed (e.g., GSM); *or*

f.3.c. Exploit specific characteristics of the mobile telecommunications protocol employed (e.g., GSM);

f.4. Radio Frequency (RF) monitoring equipment designed or modified to identify the operation of items specified in 5A001.f.1, 5A001.f.2 or 5A001.f.3.

Note: *5A001.f.1 and 5A001.f.2 do not apply to any of the following:*

a. Equipment specially designed for the interception of analog Private Mobile Radio (PMR), IEEE 802.11 WLAN;

b. Equipment designed for mobile telecommunications network operators; or

c. Equipment designed for the ''development'' or ''production'' of mobile telecommunications equipment or systems.

N.B. 1: See also the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130). For items specified by 5A001.f.1 (including as previously specified by 5A001.i), see also5A980 and the U.S. Munitions List (22 CFR part 121).

N.B. 2: For radio receivers see 5A001.b.5.

* * * * *

h. Counter Improvised Explosive Device (IED) equipment and related equipment, as follows:

h.1. Radio Frequency (RF) transmitting equipment, not specified by 5A001.f, designed or modified for prematurely activating or preventing the initiation of Improvised Explosive Devices (IEDs);

h.2. Equipment using techniques designed to enable radio communications in the same frequency channels on which co-located equipment specified by 5A001.h.1 is transmitting.

N.B.: See also Category XI of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

i. [RESERVED]

N.B.: See 5A001.f.1 for items previously specified by 5A001.i.

■ 33. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5A980 is amended by revising the Heading and the List of Items Controlled section, to read as follows:

5A980 Devices primarily useful for the surreptitious interception of wire, oral, or electronic communications, other than those controlled under 5A001.f.1; and parts and accessories therefor.

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: (1) See ECCN 5A001.f.1 for systems or equipment, specially designed or modified to intercept and process the air interface of 'mobile telecommunications', and specially designed components therefor. (2) See ECCN 5D980 for ''software'' for the ''development'', ''production'' or ''use'' of equipment controlled by 5A980. (3) See ECCN 5E980 for the ''technology'' for the ''development'', ''production'', and ''use'' of equipment controlled by 5A980.

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

■ 34. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5B001 is amended by:

■ a. Revising the STA paragraph in the License Exception section; and

■ b. Revising paragraph .a in the Items paragraph of the List of Items Controlled section, to read as follows:

5B001 Telecommunication test, inspection and production equipment, components and accessories, as follows (See List of Items Controlled).

* * * * *

License Exceptions

* * * * *

STA: License Exception STA may not be used to ship 5B001.a equipment and specially designed components or accessories therefor, specially designed for the ''development'' or ''production'' of equipment, functions or features specified by in ECCN 5A001.b.3, .b.5 or .h to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

List of Items Controlled

* * * * *

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the ''development'' or ''production'' of equipment, functions or features, controlled by 5A001;

Note: *5B001.a does not apply to optical fiber characterization equipment.*

* * * * *

■ 35. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5D001 is amended by revising the License Requirements section to read as follows:

5D001 ''Software'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, SL, AT

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
SL applies to the entire entry as applicable for equipment, functions, features, or characteristics controlled by 5A001.f.1.	A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). **Note to SL paragraph:** This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended.
AT applies to entire entry.	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions. See § 740.2(a)(3) of the EAR for restrictions on the use of License Exceptions for 5D001 (as it applies to 5A001.f.1 or 5E001.a (as it applies to 5A001.f.1 or 5D001.a (as it applies to 5A001.f.1))).

* * * * *

■ 36. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5D980 is amended by revising the Heading and the Related Controls paragraph in the List of Items Controlled Section, to read as follows:

5D980 Other ''software'', other than that controlled by 5D001 (for the equipment, functions, features, or characteristics controlled by 5A001. f.1, or to support certain ''technology'' controlled by 5E001.a), as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 5D001.a and .c for software controls for equipment, functions, features or characteristics controlled by 5A001.f.1 and also 5D001.b for controls on ''software'' specially designed or modified to support ''technology'' controlled by 5E001.a (for 5A001.f.1 equipment, functions or features, and for 5D001.a ''software'' for 5A001.f.1 equipment). See 5E980 for ''technology'' for the ''development'', ''production'', and ''use'' of equipment controlled by 5A980 or ''software'' controlled by 5D980.

Related Definitions: * * *

Items: * * *

■ 37. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5E001 is amended by:

■ a. Revising the License Requirements section; and

■ b. Revising paragraph .d in the Items paragraph of the List of Items Controlled section, to read as follows:

5E001 "Technology" as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, SL, AT

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
SL applies to "technology" for the "development" or "production" of equipment, functions or features controlled by 5A001.f.1, or for the "development" or "production" of "software" controlled by ECCN 5D001.a (for 5A001.f.1).	A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).
	Note to SL paragraph: *This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended.*
AT applies to entire entry.	AT Column 1.

License Requirement Notes: *See § 743.1 of the EAR for reporting requirements for exports under License Exceptions. See § 740.2(a)(3) of the EAR for restrictions on the use of License Exceptions for 5E001.a (as it applies to 5A001.f.1 or 5D001.a (as it applies to 5A001.f.1))).*

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List of Items Controlled

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Items:

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d. "Technology" according to the General Technology Note for the "development" or "production" of Microwave Monolithic Integrated Circuit (MMIC) power amplifiers specially designed for telecommunications and having any of the following:

d.1. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6.8 GHz and with an average output power greater than 4 W (36 dBm) with a "fractional bandwidth" greater than 15%;

d.2. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz and with an average output power greater than 1 W (30 dBm) with a "fractional bandwidth" greater than 10%;

d.3. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and with an average output power greater than 0.8 W (29 dBm) with a "fractional bandwidth" greater than 10%;

d.4. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37 GHz and with an average output power greater than 0.1 nW (−70 dBm);

d.5. Rated for operation at frequencies exceeding 37 GHz up to and including 43.5 GHz and with an average output power greater than 1.0 W (30 dBm);

d.6. Rated for operation at frequencies exceeding 43.5 GHz up to and including 75 GHz and with an average output power greater than 31.62 mW (15 dBm) with a "fractional bandwidth" greater than 10%;

d.7. Rated for operation at frequencies exceeding 75 GHz up to and including 90 GHz and with an average output power greater than 10 mW (10 dBm) with a "fractional bandwidth" greater than 5%; *or*

d.8. Rated for operation at frequencies exceeding 90 GHz and with an average output power greater than 0.1 nW (−70 dBm);

* * * * *

■ 38. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 1, ECCN 5E980 is amended by revising the Heading and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

5E980 "Technology", other than that controlled by 5E001.a (for 5A001.,f.1 and for 5D001.a (for 5A001.f.1)), primarily useful for the "development", "production", or "use" of equipment, functions or features, of equipment controlled by 5A980 or "software" controlled by 5D980.

* * * * *

List of Items Controlled

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Related Controls: See also 5D001.a and .c (for 5A001.f.1 equipment), 5D001.b (supporting 5E001.a "technology" for 5A001.f.1 equipment, or for 5D001.a "software" (for 5A001.f.1equipment)), and 5E001.a (for 5A001.f.1 equipment, or for 5D001.a "software" for 5A001.f.1 equipment).

* * * * *

■ 39. Supplement No. 1 to part 774, Category 5, Part 2 is amended by revising Note 3 to read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND "INFORMATION SECURITY"

Part 2—"INFORMATION SECURITY"

* * * * *

Note 3: *Cryptography Note: ECCNs 5A002 and 5D002 do not control items as follows:*

a. Items meeting all of the following:

1. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:

a. Over-the-counter transactions;

b. Mail order transactions;

c. Electronic transactions; or

d. Telephone call transactions;

2. The cryptographic functionality cannot be easily changed by the user;

3. Designed for installation by the user without further substantial support by the supplier; and

4. [RESERVED]

5. When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter's country in order to ascertain compliance with conditions described in paragraphs 1. through 3. of this Note a.;

b. Hardware components of existing items described in paragraph a. of this Note, that have been designed for these existing items, meeting all of the following:

1. "Information security" is not the primary function or set of functions of the component;

2. The component does not change any cryptographic functionality of the existing items, or add new cryptographic functionality to the existing items;

3. The feature set of the component is fixed and is not designed or modified to customer specification; and

4. When necessary, as determined by the appropriate authority in the exporter's country, details of the component and relevant end-items are accessible and will be provided to the authority upon request, in order to ascertain compliance with conditions described above.

Note to the Cryptography Note:

1. To meet paragraph a. of Note 3, all of the following must apply:

a. The item is of potential interest to a wide range of individuals and businesses; and

b. The price and information about the main functionality of the item are available before purchase without the need to consult the vendor or supplier.

2. In determining eligibility of paragraph a. of Note 3, BIS may take into account relevant factors such as quantity, price, required technical skill, existing sales channels, typical customers, typical use or any exclusionary practices of the supplier.

N.B. to Note 3 (Cryptography Note): *You must submit a classification request or encryption registration to BIS for mass market encryption commodities and software eligible for the Cryptography Note employing a key length greater than 64 bits for the symmetric algorithm (or, for commodities and software not implementing any symmetric algorithms, employing a key length greater than 768 bits for asymmetric algorithms or greater than 128 bits for elliptic curve algorithms) in accordance with the requirements of § 742.15(b) of the EAR in order to be released from the "EI" and "NS" controls of ECCN 5A002 or 5D002.*

■ 40. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 2, ECCN 5A002 is amended by:

■ a. Redesignating paragraphs (1) and (2) as (2) and (3) in the Related Controls paragraph in the List of Items Controlled Section, and adding a new paragraph (1) to read as set forth below;

■ b. Revising paragraphs (g) and (i) of the Note to the Items paragraph in the List of Items Controlled Section; and

■ c. Revising paragraph .a of the Items paragraph in the List of Items Controlled Section to read as follows:

5A002 "Information security" systems, equipment and components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) ECCN 5A002.a controls "components" providing the means or functions necessary for "information security." All such "components" are presumptively "specially designed" and controlled by 5A002.a. (2) *5A002* does not control the commodities listed in paragraphs (a), (d), (e), (f), (g), (i) and (j) in the Note in the items paragraph of this entry. These commodities are instead classified under ECCN *5A992,* and related software and technology are classified under ECCNs *5D992* and *5E992* respectively. (3) After encryption registration to or classification by BIS, mass market encryption commodities that meet eligibility requirements are released from "EI" and "NS" controls. These commodities are classified under ECCN *5A992.c.* See § 742.15(b) of the EAR.

* * * * *

Items:

Note: * * *

(g) Portable or mobile radiotelephones and similar client wireless devices for civil use, that implement only published or commercial cryptographic standards (except for anti-piracy functions, which may be non-published) and also meet the provisions of paragraphs a.2. to a.5. of the Cryptography Note (Note 3 in Category 5–Part 2), that have been customized for a specific civil industry application with features that do not affect the cryptographic functionality of these original non-customized devices;

* * * * *

(i) Wireless "personal area network" equipment that implement only published or commercial cryptographic standards and where the cryptographic capability is limited to a nominal operating range not exceeding 30 meters according to the manufacturer's specifications, or not exceeding 100 meters according to the manufacturer's specifications for equipment that cannot interconnect with more than seven devices; or

* * * * *

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows, and components therefor specially designed for "information security":

N.B.: For the control of Global Navigation Satellite Systems (GNSS) receiving equipment containing or employing decryption, see ECCN 7A005.

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication, digital signature, or execution of copy-protected "software," and having any of the following:

Technical Notes:

1. Functions for authentication, digital signature and the execution of copy-protected "software" include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: *5A002.a.1 includes equipment designed or modified to use "cryptography" employing analog principles when implemented with digital techniques.*

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; or

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (e.g., RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (e.g., Diffie-Hellman over Z/pZ); or

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (e.g., Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

Note: *5A002.a.2 includes systems or equipment, designed or modified to perform cryptanalysis by means of reverse engineering.*

a.3. [RESERVED]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, not controlled in 5A002.a.6., including the hopping code for "frequency hopping" systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques and having any of the following:

a.6.a. A bandwidth exceeding 500 MHz; or

a.6.b. A "fractional bandwidth" of 20% or more;

a.7. Non-cryptographic information and communications technology (ICT) security systems and devices that have been evaluated and certified by a national authority to exceed class EAL–6 (evaluation assurance level) of the Common Criteria (CC) or equivalent;

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion;

Note: *5A002.a.8 applies only to physical layer security.*

a.9. Designed or modified to use 'quantum cryptography.'

Technical Notes:

1. 'Quantum cryptography' A family of techniques for the establishment of a shared key for "cryptography" by measuring the quantum-mechanical properties of a physical system (including those physical properties explicitly governed by quantum optics, quantum field theory, or quantum electrodynamics).

2. 'Quantum cryptography' is also known as Quantum Key Distribution (QKD).

* * * * *

■ 41. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 2, ECCN 5A992 is amended by revising the Items paragraph of the List of Items Controlled to read as follows:

5A992 Equipment not controlled by 5A002.

* * * * *

List of Items Controlled

* * * * *

Items:

a. Telecommunications and other information security equipment containing encryption.

b. "Information security" equipment, n.e.s., (e.g., cryptographic, cryptanalytic, and cryptologic equipment, n.e.s.) and components therefor.

Note: *5A992 does not control products with cryptographic functionality limited to copy protection.*

c. Commodities that BIS has received an encryption registration or that have been classified as mass market encryption commodities in accordance with § 742.15(b) of the EAR.

■ 42. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part 2, ECCN 5E002 is amended by revising the items paragraph of the List of Items Controlled section to read as follows:

5E002 "Technology" as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" of equipment controlled by 5A002 or 5B002 or "software" controlled by 5D002.a or 5D002.c.

b. "Technology" to enable an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

Note: *5E002 includes "information security" technical data resulting from procedures carried out to evaluate or determine the implementation of functions, features or techniques specified in Category 5, Part 2.*

■ 43. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6A001 is amended by revising

paragraphs a.1.a.2 and a.1.a.3 of the Items paragraph in the List of Items Controlled section to read as follows:

6A001 Acoustic systems, equipment and components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.1. * * *

a.1.a. * * *

a.1.a.2. Underwater survey equipment designed for seabed topographic mapping and having any of the following:

Technical Note: *The acoustic sensor pressure rating determines the depth rating of the equipment specified by 6A001.a.1.a.2.*

a.1.a.2.a. Having all of the following:

a.1.a.2.a.1. Designed or modified to operate at depths exceeding 300 m; and

a.1.a.2.a.2. 'Sounding rate' greater than 3,800; *or*

Technical Note: *'Sounding rate' is the product of the maximum speed (m/s) at which the sensor can operate and the maximum number of soundings per swath assuming 100% coverage.*

a.1.a.2.b. Survey equipment, not specified by 6A001.a.1.a.2.a, having all of the following:

a.1.a.2.b.1. Designed or modified to operate at depths exceeding 100 m;

a.1.a.2.b.2. Designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2.b.3. Having any of the following:

a.1.a.2.b.3.a. Operating frequency below 350 kHz; *or*

a.1.a.2.b.3.b. Designed to measure seabed topography at a range exceeding 200 m from the acoustic sensor; *and*

a.1.a.2.b.4. 'Enhancement' of the depth accuracy through compensation of all of the following:

a.1.a.2.b.4.a. Motion of the acoustic sensor;

a.1.a.2.b.4.b. In-water propagation from sensor to the seabed and back; *and*

a.1.a.2.b.4.c. Sound speed at the sensor.

a.1.a.3. Side Scan Sonar (SSS) or Synthetic Aperture Sonar (SAS), designed for seabed imaging and having all of the following:

a.1.a.3.a. Designed or modified to operate at depths exceeding 500 m; and

a.1.a.3.b. An 'area coverage rate' of greater than 570 m^2/s while operating at the maximum range that it can operate with an 'along track resolution' of less than 15 cm; *and*

a.1.a.3.c. An 'across track resolution' of less than 15 cm;

Technical Notes:

1. 'Area coverage rate' (m^2/s) is twice the product of the sonar range (m) and the maximum speed (m/s) at which the sensor can operate at that range.

2. 'Along track resolution' (cm), for SSS only, is the product of azimuth (horizontal) beamwidth (degrees) and sonar range (m) and 0.873.

3. 'Across track resolution' (cm) is 75 divided by the signal bandwidth (kHz).

* * * * *

■ 44. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6A002 is amended by:

■ a. Remove the period and add a semi-colon in its place at end of paragraphs a.3.a.2.b, a.3.b.2.b, a.3.g.3 and c.3 in Items paragraph of List of Items Controlled section; and

■ b. Remove ''Signal Processing In The Element (SPRITE);'' and add in its place ''Signal processing in the detector elements;'' in paragraph a.3.d.2.b in the Items paragraph of the List of Items Controlled section.

■ 45. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6A005 is amended by:

■ a. Revising the License Requirements section and paragraph d. of the License Requirements Notes, as set forth below;

■ b. Removing ''520'' and adding in its place ''510'' in paragraphs a.2, a.3, b.2, and b.3 in the Items paragraph of the List of Items Controlled; and

■ c. Revising paragraph a.6 in the Items paragraph of the List of Items Controlled to read as follows:

6A005 ''Lasers'' (other than those described in 0B001.g.5 or .h.6), components and optical equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry.	NS Column 2
NP applies to ''lasers'' controlled by 6A005.a.2, a.3, b.2.b, b.3, b.4.b, b.6.b, c.1.b, c.2.b, d.3.c, and d.4.c, as described in the following License Requirements Note..	NP Column 1
AT applies to entire entry.	AT Column 1.

License Requirements Note: *NP controls apply to the following ''lasers'' controlled by 6A005:*

* * * * *

(d) Argon ion ''lasers'' controlled by 6A005.a.2 and 6A005.a.3, having all of the following characteristics:

(1) Operating at wavelengths between 400 and 515 nm; and

(2) An average output power ≥ 50 W;

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. * * *

a.6. Output wavelength exceeding 975 nm but not exceeding 1,150 nm and any of the following;

a.6.a. Single transverse mode output and output power exceeding 200 W; *or*

a.6.b. Multiple transverse mode output and any of the following:

a.6.b.1. 'Wall-plug efficiency' exceeding 18% and output power exceeding 500 W; or

a.6.b.2. Output power exceeding 2 kW;

Note: *6A005.a.6.b does not control multiple transverse mode, industrial ''lasers'' with output power exceeding 2kW and not exceeding 6 kW with a total mass greater than 1,200 kg. For the purpose of this note, total mass includes all components required to operate the ''laser'', e.g., ''laser'', power supply, heat exchanger, but excludes external optics for beam conditioning and/or delivery.*

* * * * *

■ 46. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6C004 is amended by revising paragraph .b and .c in the Items paragraph of the List of Items Controlled section to read as follows:

6C004 Optical materials as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Electro-optic materials and non-linear materials, as follows:

b.1. Potassium titanyl arsenate (KTA) (CAS 59400–80–5);

b.2. Silver gallium selenide ($AgGaSe_2$, also known as AGSE) (CAS 12002–67–4);

b.3. Thallium arsenic selenide (Tl_3AsSe_3, also known as TAS) (CAS 16142–89–5);

b.4. Zinc germanium phosphide ($ZnGeP_2$, also known as ZGP, zinc germanium biphosphide or zinc germanium diphosphide); *or*

b.5. Gallium selenide (GaSe) (CAS 12024–11–2);

c. Non-linear optical materials, other than those specified by 6C004.b, having any of the following:

c.1. Having all of the following:

c.1.a. Dynamic (also known as nonstationary) third order nonlinear susceptibility ($\chi^{(3)}$, chi 3) of 10^{-6} m^2/V^2 or more; *and*

c.1.b. Response time of less than 1 ms; *or*

c.2. Second order nonlinear susceptibility ($\chi^{(2)}$, chi 2) of 3.3×10^{-11} m/V or more;

* * * * *

■ 47. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6C005 is amended by revising the Items paragraph in the List of Items Controlled section to read as follows:

6C005 Synthetic crystalline ''laser'' host material in unfinished form as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Titanium doped sapphire.

b. [RESERVED]

■ 48. Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7A001 is amended by revising paragraph .a.2 of the Items paragraph in the List of Items Controlled section to read as follows:

7A001 Accelerometers as follows (see List of Items Controlled) and specially designed components therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.2. Specified to function at linear acceleration levels exceeding 15 g but less than or equal to 100 g and having all of the following:

a.2.a. A ''bias'' ''repeatability'' of less (better) than 1,250 micro g over a period of one year; *and*

a.2.b. A ''scale factor'' ''repeatability'' of less (better) than 1,250 ppm over a period of one year; *or*

* * * * *

■ 49. Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7D003 is amended by:

■ a. Revising the STA paragraph in the License Exceptions section;

■ b. Revising the Related Controls paragraph of the List of Items Controlled section; and

■ c. Revising paragraph .d in the Items paragraph of the List of Items Controlled section, to read as follows:

7D003 Other ''software'' as follows (see List of Items Controlled).

* * * * *

License Exceptions

* * * * *

STA: License Exception STA may not be used to ship or transmit software in 7D003.a, b, or c to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

List of Items Controlled

Unit: * * *

Related Controls: See also 0D521 No. 2 (''source code'' for the ''development'' of fly-by-wire control systems), 0E521 No. 6 (for ''technology'' for the ''development'' of ''software'' controlled by 0D521 No. 2), *7D103* and *7D994*

Related Definitions: * * *

Items:

* * * * *

d. [RESERVED]

N.B. For flight control ''source code,'' see 7D004.

* * * * *

■ 50. Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7D004 is added after 7D003 to read as follows:

7D004 ''Source code'' incorporating ''development'' ''technology'' specified by 7E004.a or 7E004.b, for any of the following: (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: License Exception STA may not be used to ship or transmit ''software'' in 7D004.a to .d and .g to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

List of Items Controlled

Unit: $ value

Related Controls: See also 0D521 No. 2 (''source code'' for the ''development'' of fly-by-wire control systems), 0E521 No. 6 (for ''technology'' for the ''development'' of ''software'' controlled by 0D521 No. 2), *7D103* and *7D994*

Related Definitions: N/A

Items:

a. Digital flight management systems for ''total control of flight'';

b. Integrated propulsion and flight control systems;

c. Fly-by-wire or fly-by-light control systems;

d. Fault-tolerant or self-reconfiguring ''active flight control systems'';

e. [RESERVED];

f. Air data systems based on surface static data; *or*

g. Three dimensional displays.

Note: *7D004 does not apply to ''source code'' associated with common computer elements and utilities (e.g., input signal acquisition, output signal transmission, computer program and data loading, built-in test, task scheduling mechanisms) not providing a specific flight control system function.*

■ 51. Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7E001 is amended by revising the Heading and the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'', controlled by 7A (except 7A994), 7B (except 7B994), 7D001, 7D002, or 7D003.

List of Items Controlled

Unit: * * *

Related Controls: (1.) See also 0D521 No. 2 (''source code'' for the ''development'' of fly-by-wire control systems), 0E521 No. 6 (for ''technology'' for the ''development'' of ''software'' controlled by 0D521 No. 2), 7E101 and 7E994. (2.) The ''technology'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software in 7D101 specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

■ 52. Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7E004 is amended by revising the Related Controls paragraph and paragraph .b of the Items paragraph in the List of Items Controlled section to read as follows:

7E004 Other ''technology'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 0D521 No. 2 (''source code'' for the ''development'' of fly-by-wire control systems), 0E521 No. 6 (for ''technology'' for the ''development'' of ''software'' controlled by 0D521 No. 2), 7E104 and 7E994.

Related Definitions: * * *

Items:

* * * * *

b. ''Development'' ''technology'', as follows, for ''active flight control systems'' (including fly-by-wire or fly-by-light):

b.1. Photonic-based ''technology'' for sensing aircraft or flight control component state, transferring flight control data, or commanding actuator movement, ''required'' for fly-by-light ''active flight control systems'';

b.2. [RESERVED]

b.3. Real-time algorithms to analyze component sensor information to predict and preemptively mitigate impending degradation and failures of components within an ''active flight control system'';

Note: *7E004.b.3 does not include algorithms for purpose of off-line maintenance.*

b.4. Real-time algorithms to identify component failures and reconfigure force and moment controls to mitigate ''active flight control system'' degradations and failures;

Note: *7E004.b.4 does not include algorithms for the elimination of fault effects through comparison of redundant data sources, or off-line pre-planned responses to anticipated failures.*

b.5. Integration of digital flight control, navigation and propulsion control data, into a digital flight management system for ''total control of flight'';

Note: *7E004.b.5 does not apply to:*

1. ''Development'' ''technology'' for integration of digital flight control, navigation and propulsion control data, into a digital flight management system for ''flight path optimization'';

2. ''Development'' ''technology'' for ''aircraft'' flight instrument systems integrated solely for VOR, DME, ILS or MLS navigation or approaches.

b.6. Full authority digital flight control or multisensor mission management systems, employing ''expert systems'';

N.B.: For ''technology'' for ''Full Authority Digital Engine Control Systems'' (''FADEC Systems''), see ECCN 9E003.h.

Note: *7E004.b does not apply to ''technology'' associated with common computer elements and utilities, e.g., input signal acquisition, output signal transmission, computer program and data loading, built-in test, task scheduling mechanisms) not providing a specific flight control system function.*

* * * * *

■ 53. Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A001 is amended by removing the phrase ''Participating State'' and adding in its place ''Wassenaar Arrangement Participating State'' in the introductory text of paragraph .b in Note 9A001.a of the Items paragraph in the List of Items Controlled section.

■ 54. Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A018 is amended by revising paragraph .b of the Items paragraph in the List of Items Controlled section, to read as follows:

9A018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Ground vehicles (including trailers) and ''components,'' as follows:

b.1. Ground transport vehicles (including trailers) and ''parts'' and ''components'' therefor designed or modified for non-combat military use;

b.2. Other ground vehicles having all of the following:

b.2.a. Manufactured or fitted with ''materials'' or ''components'' to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better; (See § 770.2(h)—Interpretation 8).

b.2.b. A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;

b.2.c. Gross Vehicle Weight Rating (GVWR) greater than 4,500 kg; *and*

b.2.d. Designed or modified for off-road use;

b.3. ''Components'' having all of the following:

b.3.a. ''Specially designed'' for vehicles specified in 9A018.b.2; *and*

b.3.b. Providing ballistic protection to level III (NIJ 0108.01, September 1985, or comparable national standard) or better.

Note: *9A018 does not apply to civil vehicles designed or modified for transporting money or valuables.*

* * * * *

■ 55. Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9E003 is amended by:

■ a. Revising paragraph a.5 of the Items paragraph in the List of Items Controlled section, as set forth below; and

■ b. Removing the period at the end of paragraph h.3 and adding in its place a semi-colon.

9E003 Other ''technology'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.5. Cooled turbine blades, vanes or ''tip-shrouds'', other than those described in 9E003.a.1, designed to operate at a 'gas path temperature' of 1,693 K (1,420°C) or more;

Technical Notes:

1. 'Gas path temperature' is the bulk average gas path total (stagnation) temperature at the leading edge plane of the turbine component when the engine is running in a 'steady state mode' of operation at the certificated or specified maximum continuous operating temperature.

2. The term 'steady state mode' defines engine operation conditions, where the engine parameters, such as thrust/power, rpm and others, have no appreciable fluctuations, when the ambient air temperature and pressure at the engine inlet are constant.

* * * * *

■ 56. Supplement No. 1 to Part 774 (the Commerce Control List), Supplement No. 2 ''General Technology and Software Notes'' is amended by revising Note 2 ''General Software Note'' to read as follows:

SUPPLEMENT NO. 2 TO PART 774—GENERAL TECHNOLOGY AND SOFTWARE

Notes

* * * * *

2. *General Software Note.* License Exception TSU (mass market software) (see § 740.13 of the EAR) is available to all destinations, except countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, for release of ''software'' which is any of the following:

1. Generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;

2. Mail order transactions;

3. Electronic transactions; *or*

4. Telephone call transactions; *and*

b. Designed for installation by the user without further substantial support by the supplier.

2. [RESERVED] See § 734.3(b)(3) for ''publicly available technology and software.''

3. The minimum necessary ''object code'' for the installation, operation, maintenance (checking) or repair of those items whose export has been authorized.

Note: *Minimum necessary ''object code'' does not enhance or improve the performance of an item or provide new features or functionality.*

Note: *The General Software Note does not apply to ''software'' controlled by Category 5, part 2 ''Information Security''). For ''software'' controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.*

■ 57. Supplement No. 5 to Part 774 is amended by revising 0D521 and 0E521 sections of the table to read as follows:

Supplement No. 5 to Part 774—Items Classified Under ECCNS 0A521, 0B521, 0C521, 0D521 and 0E521

* * * * *

Item descriptor. **Note:** The description must match by model number or a broader descriptor that does not necessarily need to be company specific	Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date)	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued	Item-specific license exception eligibility
* *	*	*	* *
0D521. Software			
* *	*	*	* *
No. 2 ..... ''Source code'' for the ''development'' of fly-by-wire control systems.	June 20, 2013 (ID)	June 20, 2014	License Exception GOV under § 740.11(b)(2)(ii) only.

Item descriptor. **Note:** The description must match by model number or a broader descriptor that does not necessarily need to be company specific	Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date)	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued	Item-specific license exception eligibility
0E521. Technology			
* *	* *	*	* *
No. 2 [RESERVED]	[RESERVED]	[RESERVED]	[RESERVED].
No. 3 [RESERVED]	[RESERVED]	[RESERVED]	[RESERVED].
No. 4 [RESERVED]	[RESERVED]	[RESERVED]	[RESERVED].
No. 5 [RESERVED]	[RESERVED]	[RESERVED]	[RESERVED].
No. 6 "Technology" for fly-by-wire control systems, as follows:. a. "Technology" according to the General Technology Note for the "development" of "software" controlled by 0D521; or b. "Development" "technology" for "active flight control systems" for control law compensation for sensor location or dynamic airframe loads, i.e., compensation for sensor vibration environment or for variation of sensor location from the center of gravity.	June 20, 2013 (ID)	June 20, 2014	License Exception GOV under § 740.11(b)(2)(ii) only.

Dated: June 12, 2013.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2013–14644 Filed 6–19–13; 8:45 am]

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Part V

Small Business Administration

13 CFR Part 121

Small Business Size Standards; Final Rules

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG43

Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 11 industries in North American Industry Classification System (NAICS) Sector 11, Agriculture, Forestry, Fishing and Hunting, and retaining the current standards for five industries and two exceptions to NAICS 115310. As part of its ongoing comprehensive size standards review, SBA evaluated 16 industries and two exceptions in NAICS Sector 11 to determine whether the existing size standards should be retained or revised. SBA did not review size standards for 46 industries in NAICS Sector 11 that are currently set by statute at $750,000 in average annual receipts. SBA also did not review the 500-employee based size standard for NAICS 113310, Logging, but will review it in the near future with other employee based size standards.

DATES: This rule is effective July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Economist, Size Standards Division, by phone at (202) 205–6618 or by email at *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. Financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and the Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income based size standards. At the start of the current comprehensive size standards review, there were 41 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, there are a total of 1,031 size standards, 516 of which are based on average annual receipts, 499 on number of employees, 10 on megawatt hours, and six on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether they are supportable by current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is considering groups of related industries on a Sector by Sector basis.

As part of its comprehensive size standards review, SBA evaluated 16 industries and two sub-industries (''exceptions'') in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, to determine whether the existing size standards should be retained or revised. SBA did not review size standards for 46 industries in NAICS Sector 11 that are currently set by statute at $750,000 in average annual receipts. SBA also did not review the 500-employee based size standard for NAICS 113310, Logging, but will review it in the near future with other employee based size standards.

On September 11, 2012, SBA published a proposed rule in the **Federal Register** (77 FR 55755) seeking public comment on its proposal to increase the size standards for 11 industries in that Sector and retain the size standards for five remaining industries and two sub-industries (''exceptions''). The comment period ended on November 13, 2012.

In conjuction with the current comprehensive size standards review, SBA developed a ''Size Standards Methodology'' for establishing, reviewing, and modifying size standards, where necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comment and also included it as a supporting document in the electronic docket of the September 11, 2012 proposed rule at *www.regulations.gov*.

When evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 11, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 County Business Patterns and the 2007 Census of Agriculture from the National Agricultural Statistics Service (NASS). NAICS Sector 11 is not covered by the Census Bureau's Economic Census. (For a more detailed discussion, please see 77 FR 55755). SBA also evaluated the level and small business share of Federal contract dollars in each of those industries using the data from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA examined data on its own guaranteed loan programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review, and modify where necessary, the existing size standards for industries in NAICS Sector 11. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's application of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

In the proposed rule, SBA sought comments on its proposal to increase the size standards for 11 industries and retain the existing size standards for the remaining five industries and two sub-industries that were examined in NAICS Sector 11. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standards are appropriate and whether it should adopt common size standards for certain Industry Groups and Subsectors in NAICS Sector 11.

SBA's analyses supported lower size standards for four industries and two sub-industries in NAICS Sector 11. However, as explained in the proposed rule, SBA did not propose to lower them in view of the current economic environment because lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs, which could adversely affect those firms that would no longer qualify as small, and would be counter to what the Federal government and SBA are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size standards for those industries and sub-industries and requested comments on whether the Agency should lower them based on its analyses. In addition, SBA requested comments on the elimination of the Forest Fire Suppression and Fuel Management Services as ''exceptions'' to NAICS 115310, and the application of the same size standard for them as for the rest of the NAICS 115310.

Summary of Comments

SBA received 13 comments from 12 respondents to the proposed rule. Ten of the respondents offered support for the Agency's efforts to update size standards in NAICS Sector 11, and two of the respondents commented about issues not related to the proposed rule. More specifically, one commenter offered support for all SBA's proposed changes for evaluated industries under NAICS Sector 11; two supported the increase in size standards for NAICS 115111, Cotton Ginning, from $7 million to $10 million; and five offered support to retain the two sub-industries, Forest Fire Suppression and Fuels Management Services, as ''exceptions under NAICS 115310, Support Activities for Forestry; they also supported retaining the current $17.5 million size standard for each of them even if the SBA's analyses supported lowering it. Additionally, one commenter, an association of dealers and manufacturers of agricultural equipment, suggested examining their industries as part of the evaluation of size standards in NAICS Sector 11. Finally, a hunter expressed concern with the indirect impact any proposed changes to size standards may have on deer hunting regulations. All comments to the proposed rule for NAICS Sector 11 are available for public review at *http://www.regulations.gov,* using RIN 3245–AG30 or docket number SBA–2012–0003. These comments are summarized in more detail below.

General Support to the Proposed Rule

One commenter generally supported the size standards review and rulemaking process and changes to size standards being considered by SBA. Specifically, the commenter supported the SBA's proposal to simplify size standards by basing them on eight fixed levels, because that will provide regulatory certainty to small business concerns under NAICS Sector 11. Second, he supported SBA's proposal to retain the current size standards for the four industries and two sub-industries under NAICS Sector 11 for which SBA's analysis could support lowering them. Finally, the commenter expressed unqualified support for SBA's analysis in this proposed rulemaking in particular and support for SBA's continued efforts to assist small businesses in general.

NAICS 115111, Cotton Ginning

Two commenters representing different trade associations of cotton ginners fully supported SBA's proposal to increase the size standard for NAICS 115111, Cotton Ginning from $7 million in average annual receipts to $10 million. Both recognized that the increased size standard accounts for changes in the structure of the industry, such as changes in the marketplace, increased operation costs, and technological changes.

NAICS 115310—Forest Fire Suppression and Fuels Management Services, Exceptions

Five commenters fully supported the SBA's proposal to retain the Forest Fire Suppression and Fuels Management Services as ''exceptions'' under NAICS 115310, Support Activities for Forestry, and their corresponding current size standard of $17.5 million.

Three commenters were small businesses that provide services in the forest industry. These commenters advocated for retention of the $17.5 million size standard for the two sub-industries (*i.e.,* exceptions) under NAICS 115310. One of the three agreed with SBA's proposal to keep the $17.5 million size standard because it allows for small businesses to average out good years and bad years in revenues earned in this support service.

A logging organization, whose membership includes wildland firefighting organizations, also commented in support of SBA's proposal. The association added that most of its members are small and family owned operations who offered their support for keeping the current $17.5 million size standard.

SBA agrees with these commenters. SBA considers that the numerical results of these two sub-industries in the proposed rule reflected the decreases in numbers of fires and consequent reductions in payments to contractors during fiscal years 2008–2010 as compared to previous years. Given the inherent uncertainty of occurrences of forest fires, SBA believes that contracting officers need flexibility to hire small businesses, especially in the worst case scenario. In a very active fire season, size of payments can easily support the $17.5 million size standard for Fire Suppression Services.

Two associations representing several companies that primarily deal with fuels management and fire suppression support services to the forest industry also urged SBA to retain its current $17.7 million size standard for these support services. One of these

organizations included a large volume of contract documents and some statistical information to support its advocacy for its members.

Therefore, SBA is retaining Forest Fire Suppression and Fuels Management Services as exceptions under NAICS 115310 and their current $17.5 million size standard.

Other Issues Not Related to the Proposed Rule for NAICS Sector 11

One commenter, representing a national association of farm and outdoor equipment dealers and manufacturers, expressed concern with the impact the proposed size standards revisions might have on its members. The members of the association represent two industries: NAICS 333111, Farm Machinery and Equipment Manufacturing, and NAICS 423820, Farm and Garden Machinery and Equipment Merchant Wholesalers. The commenter suggested that SBA should consider examining the size standards for these industries as part of the review of size standards for NAICS Sector 11. The commenter recommended different receipts based size standards for various agricultural equipment and machinery dealerships. SBA does not accept the commenter's recommendations in this final rule for three reasons. First, there is a single 100-employee size standard for all industries in NAICS Sector 42, Wholesale Trade, except for purposes of Federal government procurement when the 500-employee size standard applies under the non-manufacturer rule (*see* 13 CFR 121.402(b)). Similarly, for NAICS 333111, the size standard is 500 employees. Second, the association recommended receipts based size standards for both NAICS industries (NAICS 333111 and NAICS 423820). However, SBA uses the number of employees as the basis of size standards for all industries in the manufacturing and wholesale trade sectors (*see* SBA's ''Size Standards Methodology,'' referred above and in the propoposed rule). Third, these industries are not part of NAICS Sector 11. The first industry (NAICS 333111) is part of NAICS sector 31–33, Manufacturing, and the second industry (NAICS 423820) is part of NAICS 42, Wholesale Trade. Detailed information about definitions of industries under NAICS can be found at *http://www.census.gov/eos/www/naics/*. As part of its ongoing comprehensive size standards review, SBA will evaluate these industries, along with other other industries in those sectors, and publish a proposed rule for comments in the near future.

Finally, a commenter that identified herself as a hunter expressed concern over the possible increase in cost to obtain deer hunting permits because of the increases of small business size standards in NAICS Sector 11. SBA cannot respond to this comment because the Agency does not establish, modify, or clarify deer hunting regulations. SBA's size standards only applies to Federal contracting and other SBA's programs and services targeted to small businesses, including guaranteed loans.

Conclusion

Based on the analyses of relevant industry and program data and there being no public comments against the proposed rule, SBA has decided to increase the small business size standards for the 11 industries, as proposed. These industries and their revised size standards are shown in Table 1, Summary of Revised Size Standards in NAICS Sector 11, below.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 11

NAICS code	NAICS industry title	Current size standard ($ million)	Revised size standard ($ million)
112112	Cattle Feedlots	$2.0	$7.0
112310	Chicken Egg Production	$12.5	$14.0
113110	Timber Tract Operations	$7.0	$10.0
113210	Forest Nurseries and Gathering of Forest Products	$7.0	$10.0
114111	Finfish Fishing	$4.0	$19.0
114112	Shellfish Fishing	$4.0	$5.0
114119	Other Marine Fishing	$4.0	$7.0
114210	Hunting and Trapping	$4.0	$5.0
115111	Cotton Ginning	$7.0	$10.0
115114	Postharvest Crop Activities (Except Cotton Ginning)	$7.0	$25.5
115115	Farm Labor Contractors and Crew Leaders	$7.0	$14.0

For the reasons as stated above in this rule and in the proposed rule, SBA is retaining the current size standards for the four industries and two sub-industries for which analytical results suggested the Agency could lower their size standards. Those six size standards are the following: NAICS 115112, Soil Preparation, Planting, and Cultivation; NAICS 115116, Farm Management Services; NAICS 115210, Support Activities for Animal Production; NAICS 115310, Support Activities for Forestry; and the two exceptions to NAICS 115310, namely, Forest Fire Protection and Fuels Management Services. This is consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597 (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604 (October 6, 2010)); NAICS Sector 81, Other Services (75 FR 61591 (October 6, 2010)); NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)); NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)); NAICS Sector 51, Information (77 FR 72702 (December 6, 2012)); NAICS Sector 53, Real Estate and Rental and Leasing (77 FR 88747 (September 24, 2012)); NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (77 FR 72691 (December 6, 2012)); NAICS 61, Educational Services (77 FR 58739 (September 24, 2012)); and NAICS Sector 62, Health Care and Social Assistance (77 FR 58755 (September 24, 2012)). In each of those final rules, SBA retained the existing size standards for those that it could have reduced. SBA is also retaining the existing size standard for one industry in NAICS Sector 11 for which the results supported it at the current level, namely, NAICS 115113, Crop Harvesting, Primarily by Machine.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. To help explain the need of this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a ''major rule'' under the Congressional Review Act (5 U.S.C. 801).

Cost Benefit Analysis

1. Is there a need for the regulatory action?

The revised small business size standards for 11 industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, reflect the changes in economic characteristics of small businesses and the Federal procurement market. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs, SBA establishes distinct definitions to determine which businesses are deemed small. The Small Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (15 U.S.C. 632(a)). The Act also requires that small business size definitions vary to reflect industry differences. The Jobs Act requires the Administrator to review at least one-third of all size standards within each 18-month period from the date of its enactment, and review all size standards at least every five years thereafter. The supplementary information sections of the September 11, 2012 (77 FR 55755) proposed rule and this final rule explained the SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement programs reserved for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB). These programs assist small businesses to become more knowledgeable, stable, and competitive. Other Federal agencies may also use SBA's size standards for a variety of regulatory and program purposes. In the 11 industries in NAICS Sector 11 for which SBA has increased size standards, SBA estimates that more than 7,800 additional firms, not small under the current size standards, will obtain small business status and become eligible for these programs. That is about 17 percent of the total number of total firms that are classified as small under the current standards in all industries in NAICS Sector 11 that are covered by this final rule. SBA estimates this will increase the small business share of total industry receipts in those industries from about 78.4 percent under the current size standards to 79.1 percent under the revised size standards.

Three groups will benefit from the revised size standards in NAICS Sector 11 in the following ways: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling $7 million to $12 million annually under SBA's small business, 8(a), HUBZone, WOSB, EDWOSB and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the data for fiscal years 2008 to 2010, SBA estimates about 32 additional loans totaling about $7 million could be made to additional firms that could become small under the revised standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has a tangible net worth that does not exceed $15 million and also has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that do not exceed $5 million. Thus, SBA finds it difficult to quantify the actual impact of the revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of one or more disasters, SBA cannot make a meaningful estimate of this impact.

To the extent that those 7,800 newly defined additional small firms under the revised size standards become active in Federal procurement programs, the revisions to size standards may entail some additional administrative costs to the Federal Government associated with there being more bidders for Federal small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the System for Award Management (SAM) database, more firms seeking certification for the 8(a) or HUBZone Programs and more firms qualifying for WOSB, EDWOSB and SDVOSB status. Among those newly defined businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. However, SBA believes these added administrative costs are likely to be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs under the higher revised size standards. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs

may result when more full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, by law, procurements may be set aside for small businesses or reserved for the small business, 8(a), HUBZone, WOSB, EDWOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several proabable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. Similarly, some currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by more Federal procurements being set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

In an effort to engage interested parties in this regulatory action, SBA presented its methodology (discussed above under Supplementary Information in the propsed rule and this final rule) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation included information on the latest status of the comprehensive size standards review and how interested parties can provide SBA with input and feedback on the size standards review. Moreover, SBA presented the same information to Department of Defense (DoD) contracting personnel at their annual training session. It included updates on what size standards rules SBA was currently reviewing and plans to review in the future. This is important because DoD contracting provides the greatest opportunities for and awards to small businesses.

Furthermore, when SBA issued the proposed rule, it notified individuals, government procurement personnel, and companies that had in recent years exhibited an interest by letter, email, or phone, in size standards for NAICS Sector 11 so they could comment.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the proposed rule and this final rule for NAICS Sector 11.

The review of size standards in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive size standards review to ensure that they are supportable, and to revise them, where necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final 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. Therefore, SBA has determined that this final rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting. As described above, this final rule may affect small entities

seeking Federal contracts, SBA's 7(a), 504 and economic injury disaster loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (RFA) of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions and updated industry definitions have changed the structure of many industries in NAICS Sector 11. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised size standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act also requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that more than 7,800 additional firms will become small because of increases in size standards in 11 industries in NAICS Sector 11. That represents 17 percent of total firms that are small under current size standards in all industries covered by this final rule. This will result in an increase in the small business share of total industry receipts in those industries from 78.4 percent under the current size standard to 79.1 percent under the revised size standards. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the SAM database and certify at least once annually that they are small. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Revising size standards alters the access to Federal programs that assist small businesses, but they neither impose a regulatory burden nor regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to establish different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual industries within NAICS Sector 11 are discussed in the supplementary information to the proposed rule and this final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ''112112'', ''112310'', ''113110'', ''113210'', ''114111'', ''114112'', ''114119'', ''114210'', ''115111'', ''115114'', and ''115115'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
112112	Cattle Feedlots	$7.0	
*	* * * * *	*	*
112310	Chicken Egg Production	$14.0	
*	* * * * *	*	*
113110	Timber Tract Operations	$10.0	
113210	Forest Nurseries and Gathering of Forest Products	$10.0	
*	* * * * *	*	*
114111	Finfish Fishing	$19.0	
114112	Shellfish Fishing	$5.0	
114119	Other Marine Fishing	$7.0	
114210	Hunting and Trapping	$5.0	
*	* * * * *	*	*
115111	Cotton Ginning	$10.0	
*	* * * * *	*	*
115114	Postharvest Crop Activities (except Cotton Ginning)	$25.5	
115115	Farm Labor Contractors and Crew Leaders	$14.0	
*	* * * * *	*	*

Dated: June 13, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–14711 Filed 6–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG44

Small Business Size Standards: Support Activities for Mining

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for three of the four industries in North American Industry Classification System (NAICS) Subsector 213, Support Activities for Mining, that are based on average annual receipts. As part of its ongoing comprehensive size standards review, SBA evaluated the four receipts based standards in NAICs Subsector 213 under NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, to determine whether the current size standards should be retained or revised. Within NAICS Sector 21, only NAICS Subsector 213 has receipts based size standards. The rest of the industries in that Sector have employee based size standards which SBA will review in the near future with other employee based size standards.

DATES: This rule is effective July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Office of Size Standards, by phone at (202) 205–6618 or by email at *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

In an effort to eliminate possible public confusion, SBA would like to explain the changes made to the title of this rule. When SBA initially announced in the Fall 2012 Unified Agenda of Federal Regulatory and Deregulatory Actions, 78 FR 1636 at 1639 (January 8, 2013) (Item #390) that it intended to propose this rule, it was titled ''Small Business Size Standards: Mining, Quarrying, and Oil and Gas Extraction'' under Regulatory Information Number (RIN) 3245–AG44. This title was based on the one for Sector 21 of the Small Business Size Standards by NAICS Industry. However, SBA later concluded that this title was a misnomer since this rule only covers the four revenue based size standards under Subsector 213, Support Activities for Mining and not the entire Sector 21. The rest of the size standards in NAICS Sector 21 are employee-based size standards and will be addressed in a separate rule. As a result, the title of the proposed rule was clarified to read: ''Small Business Size Standards: Support Activities for Mining.'' 77 FR 72766 (December 6, 2012). We believed that this title change would make it easier for affected parties to recognize the rule when it was published, understand the scope of its coverage, and also engender more public comment and involvement.

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's current size standards use two primary measures of business size—average annual receipts and average number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and the Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income based size standards. At the start of the current comprehensive size standards review, there were 41 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's table of size standards). Of these, 31 were based on average annual receipts,

seven based on number of employees, and three based on other measures. Presently, there are a total of 1,031 size standards, 516 of which are based on average annual receipts, 499 on number of employees, 10 on megawatt hours, and six on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last comprehensive size standards review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards no less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing a group of related industries on a Sector by Sector basis.

As part of SBA's comprehensive size standards review, the Agency evaluated the four industries with receipts based size standards in NAICS Subsector 213, Support Activities for Mining within NAICS Sector 23, to determine whether their existing size standards should be retained or revised. After its evaluation, on December 6, 2012, SBA published a proposed rule in the **Federal Register** (77 FR 72766) seeking public comment on its proposal to increase three of the four receipts based size standards in that Subsector. The comment period ended on February 4, 2013. The proposed rule was one of the rules that will examine industries grouped by a NAICS Sector.

In conjunction with the current comprehensive size standards review, SBA developed a ''Size Standards Methodology'' for establishing, reviewing, and modifying size standards, where necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comment, and included it as a supporting document in the electronic docket of the December 6, 2012 proposed rule at *www.regulations.gov*.

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. To develop the proposed rule, SBA analyzed the characteristics of each industry in NAICS Subsector 213, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (the latest available). To examine the Federal marketplace, SBA evaluated the level and small business share of Federal contract dollars in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2009 to 2011.

SBA's ''Size Standards Methodology'' provides a detailed description of analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review, and modify, where necessary, the existing standards for industries in NAICS Subsector 213. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of complete data; and whether there are other facts or issues that SBA should consider.

SBA sought comments on its proposal to increase the size standards for three industries and retain the existing size standard for the remaining one industry in NAICS Subsector 213. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standards are appropriate.

Summary of Comments

SBA received only one comment to the proposed rule. The commenter suggested that $7 million should be the limit of a small business definition and anything larger than that, such as that SBA's proposed $35.5 million size standard for NAICS 213112 (Support Activities for Oil and Gas Operations) should be treated as a large business. The commenter did not provide any supporting data or analysis for his argument.

SBA disagrees with the commenter's suggestion for two reasons. First, the Small Business Act (15 U.S.C. 632(a)) (Act) requires that small business size definitions vary to reflect industry differences. Thus, a single size standard of $7 million or less across the board would be inconsistent with the Act. Second, SBA's analyses of relevant industry and Federal market data using its ''Size Standards Methodology'' show significant differences among industries, supporting a $7 million or lower size standard for some industries and higher size standards for others. Therefore, SBA is adopting the size standards increases in NAICS Subsector 213, as proposed.

The comment to the proposed rule is available for public review at *http://www.regulations.gov.*

Conclusion:

Based on the analyses of relevant industry and program data and evaluation of one public comment it received on the proposed rule, as discussed above, SBA has decided to increase the small business size standards for the three industries in

NAICS Subsectors 213, as proposed. These industries and their revised size standards are in Table 1, Summary of Revised Size Standards in NAICS Subsector 213, below.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SUBSECTOR 213

NAICS code	NAICS industry title	Current size standard ($ million)	Proposed size standard ($ million)
213112	Support Activities for Oil and Gas Operations	$7.0	$35.5
213113	Support Activities for Coal Mining	$7.0	$19.0
213114	Support Activities for Metal Mining	$7.0	$19.0

SBA is retaining the $7 million size standard for NAICS 213115, Support Activities for Nonmetallic Minerals (except Fuels). NAICS Subsector 213 has one industry, namely NAICS 213111 (Drilling Oil and Gas Wells), that has an employee based size standard, which SBA will review later with other employee based size standards in Sector 21. Until then the current 500-employee size standard will remain valid for that industry.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. To help explain the need of this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a ''major'' rule, under the Congressional Review Act, 5 U.S.C. 801, *et. seq.*

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that the changes to small business size standards for three industries in NAICS Subsector 213, Support Activities for Mining within NAICS Sector 23, reflect changes in the economic characteristics of small businesses and the Federal procurement market in these industries. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs, SBA establishes distinct definitions to determine which businesses are small and eligible for them. The Small Business Act delegated to SBA's Administrator the responsibility for establishing small business size definitions (15 U.S.C. 632(a)). The Act also requires that small business size definitions vary to reflect industry differences. The Jobs Act requires the Administrator to review at least one-third of all size standards within each 18-month period from the date of its enactment, and review all size standards at least every five years thereafter. The supplementary information sections of the December 6, 2012 proposed rule and this final rule explained the SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement programs reserved for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB). These programs assist small businesses to become more knowledgeable, stable, and competitive. Other Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. In the three industries in NAICS Subsector 213 for which SBA is increasing size standards, more than 475 firms that are above the current size standards will become small under the revised size standards and eligible for these programs. That number is about 8.5 percent of total firms that are classified as small under the current size standards in all industries in NAICS Subsector 213. SBA estimates this will increase the small business share of total industry receipts in those industries from about 13 percent under the current size standards to nearly 25 percent under the revised size standards.

Three groups will benefit from the revised size standards in NAICS Subsector 213 in the following ways: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, becoming eligible to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, being able to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

Because of limited Federal contracting activities in those industries, the revised increases in size standards in the three industries in NAICS Subsector 213 will cause very minimal impact on Federal contracting programs under SBA's small business, 8(a), SDB, HUBZone, WOSB, EDWOSB and SDVOSB Programs, and other unrestricted procurements.

Under SBA's 7(a) and 504 Loan Programs, based on the 2009–2011 data, SBA estimates about five additional loans totaling about $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and, (2) the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their

industry. Therefore, SBA finds it difficult to quantify the actual impact of these revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. The EIDL program is contingent on the occurrence and severity of one or more disasters and SBA cannot make a meaningful estimate of this impact.

The revisions to the existing size standards for three industries in NAICS Subsector Sector 21, Support Activities for Mining are consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

In an effort to engage interested parties in this regulatory action, SBA presented its methodology (discussed above under Supplementary Information in this final rule and detailed in December 6, 2012 proposed rule) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation included information on the latest status of the comprehensive size standards review and how interested parties can provide SBA with input and feedback on size standards review. Moreover, SBA also presented the same information to Department of Defense (DoD) contracting personnel at their annual training session. It included updates on what size standards rules SBA was currently reviewing and plans to review in the future.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the proposed rule and this final rule for NAICS Subsector 213.

The review of the four receipts based size standards in NAICS Subsector 213, Support Activities for Mining, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them, where necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This regulatory action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, Federalism, SBA has determined that this final 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. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Subsector 213, Support Activities for Mining. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a), 504 and economic injury disaster loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth an final regulatory flexibility analysis (RFA) of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries within NAICS Subsector 213. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised size standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that more than 475 firms, not small under the current size standards, will become small because of increases in size standards in three industries in NAICS Subsector 213. That represents 8.5 percent of total firms that are small under current size standards in all industries within NAICS Subsector 21. This will result in an increase in the small business share of total industry receipts for those industries from about 13 percent under the current size standard to nearly 25 percent under the revised size standards. The new size standards will enable more small businesses to retain their small business status for a longer period. Many businesses may have lost their eligibility and be finding it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the SAM database and certify in SAM at least once annually that they are small. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with either SAM registration or certification. Revising size standards alters the access to Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to establish different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual industries within NAICS Subsector 213 are discussed in the supplementary information to the proposed rule and this final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ''213112'', ''213113'', and ''213114'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
213112	Support Activities for Oil and Gas Operations	$35.5	
213113	Support Activities for Coal Mining	$19.0	
213114	Support Activities for Metal Mining	$19.0	
*	* * * *	*	*

Dated: June 13, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–14712 Filed 6–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG45

Small Business Size Standards: Finance and Insurance and Management of Companies and Enterprises

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is increasing small business size standards for 36 industries in North American Industry Classification System (NAICS) Sector 52, Finance and Insurance, and for two industries in NAICS Sector 55, Management of Companies and Enterprises. In addition, SBA is changing the basis for measuring size from assets to annual receipts for one industry in NAICS Sector 52, namely, NAICS 522293, International Trade Financing. Finally, SBA is deleting NAICS 525930, Real Estate Investment Trusts, from its table of size standards. The U.S. Office of Management and Budget (OMB) included the financial activities formerly included in NAICS 525930 in NAICS 531110, NAICS 531120, NAICS 531130, NAICS 531190, and NAICS 525990. As part of its ongoing comprehensive size standards review, SBA evaluated all receipts based and assets based size standards in NAICS Sectors 52 and 55 to determine whether they should be retained or revised. SBA did not review the 1,500-employee size standard for NAICS 524126, Direct Property and Casualty Insurance Carriers, which it will review in the near future with other employee based size standards. This final rule is one of a series of final rules that will review size standards of industries grouped by NAICS Sectors.

DATES: This rule is effective July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Ph.D., Economist, Office of Size Standards, by Phone at (202) 205–6618 or by email at *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION:

Introduction:

To determine eligibility for federal small business assistance programs, SBA establishes numeric small business definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. However, financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. For example, currently six size standards in NAICS Sector 52 are based on total assets. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative tangible net worth and net income based size standards. When SBA began the comprehensive size standards review in 2007, there were 41 different size standards, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's table of size standards). Of these different size standards, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, there are a total of 1,031 size standards, 516 of which are based on average annual receipts, 499 based on number of employees, 10 based on megawatt hours, and six based on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, and, in particular with changes in the federal contracting marketplace and industry structure. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the federal marketplace since the last comprehensive review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards should be retained or revised based on current data on industry structure and federal market.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and to review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts based and assets based size standards in NAICS Sector 52, Finance and Insurance, and in NAICS code Sector 55, Management of Companies and Enterprises, to determine whether the existing size standards should be retained or revised. After the review, on September 11, 2012, SBA published a proposed rule in the **Federal Register** (76 FR 63216) seeking public comment on its proposal to increase the assets based and receipts based size standards for 37 industries in NAICS Sector 52 and two industries in NAICS Sector 55 and to change the size measure from average assets to average receipts for one industry in NAICS Sector 52. In that proposed rule, SBA did not address the 1,500-employee size standard for NAICS 524126, Direct Property and Casualty Insurance Carriers. SBA will review NAICS 524126 in the near future with other employee based size standards.

In conjunction with the current comprehensive size standards review, SBA developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comment and also included it as a supporting document in the electronic docket of the September 11, 2012 proposed rule for NAICS Sector 52 and Sector 55 (77 FR 55737) at *www.regulations.gov* (Docket SBA–2012–0015, RIN 3245–AG45).

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed

the characteristics of each industry in NAICS Sectors 52 and 55 that have receipts-based size standards, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available).

To evaluate industries in NAICS Sector 52 that have assets based size standards (except for credit unions), SBA evaluated the data from the Statistics on Depository Institutions database of the Federal Deposit Insurance Corporation between 1984 and 2011 (*http://www2.fdic.gov/sdi/main.asp*) and data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program, compiled by the Federal Reserve Board (*http://www.federalreserve.gov/releases/mob/*). For the credit union industry, SBA examined the data from call reports for the fourth quarters of 1994 and 2011 from the National Credit Union Administration Web site (*http://www.ncua.gov/DataApps/QCallRptData/Pages/CallRptData.aspx*).

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008–2010.

To evaluate the federal marketplace, SBA analyzed the level and small business share of federal contracts in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010.

To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing receipts based and assets based standards for industries in NAICS Sectors 52 and 55. SBA sought comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

In the proposed rule, SBA also sought comments on its proposal to increase the receipts based and assets based size standards for 37 industries in NAICS Sector 52 and two industries in NAICS Sector 55 and to change the measure of size from average assets to average receipts for NAICS 522293, International Trade Financing. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standards are appropriate and whether the Agency should adopt common size standards for certain Industry Groups and Subsectors in NAICS Sector 52.

SBA's analyses suggested a possible lowering of one industry size standard in NAICS Sector 52. That industry is NAICS 524210, Insurance Agencies and Brokerages. However, SBA explained in the proposed rule that lowering size standards would reduce the number of firms that are currently eligible to participate in federal small business assistance programs and would run counter to what the Federal Government and SBA are doing to help small businesses and create jobs. SBA had proposed to retain the current size standard for that industry and requested comments on whether the Agency should lower the size standard for that industry. SBA received no comment opposing its proposal to retain the size standard for that industry even if the data supported lowering it. SBA has, therefore, determined that size standards that might be lowered based on its analyses alone should be retained at their current levels.

Summary of Comments

SBA received five comments on its proposal to increase the asset and receipts based size standards for 37 industries and to change the size measure from average assets to average receipts for one industry in NAICS Sector 52. SBA did not receive any comments on its proposal to increase the size standards for the two industries in NAICS Sector 55. Four commenters focused on the proposed increase to the size standard for credit unions (NAICS 522130) from $175 million in average assets to $500 million, while one commented on the size standard for Consumer Lending (NAICS 522291), which SBA proposed to increase from $7 million in average annual receipts to $35.5 million. All commenters generally supported SBA's effort to review and update size standards in NAICS Sector 52. These comments can be viewed at *www.regulations.gov* (Docket SBA–2012–0015, RIN 3245–AG45), and are summarized and discussed below.

A national association representing federal credit unions commented on the proposed rule by strongly supporting the proposed increase in the size standard for credit unions from $175 million in assets to $500 million. The commenter stated that the current industry data support this increase. It noted that the Consumer Financial Protection Bureau (CFPB) created under the Dodd-Frank Wall Street Reform and Protection Act (Dodd-Frank Act) uses SBA's size standards to assess the impact of its regulations on small entities as required by the Small Business Regulatory Enforcement and Flexibility Act (SBREFA). The association concluded that the proposed increase would offer credit unions more voices in the SBREFA process.

The next comment, submitted on behalf of the Credit Union National Association (CUNA) representing 90 percent of state and federal credit unions in the U.S., was also in strong support of SBA's proposal to increase the size standard for credit unions from $175 million in assets to $500 million. The commenter, similar to the first commenter, stated that the proposed size standard, if adopted, will permit more credit unions to benefit from provisions that require federal agencies to assess and minimize the impact of regulatory costs on small entities under the Regulatory Flexibility Act (RFA), SBREFA and Executive Orders 13272, 13653, and 13579. The commenter added that institutions below $500 million in assets lack the necessary personnel (such as a full-time compliance officer) to meet the compliance requirements.

The third and fourth commenters were members of the CUNA, representing credit unions and their members at the state levels. Both commenters strongly supported SBA's proposal to increase the credit unions' size standard to $500 million in assets. They echoed the same reasons as those provided by industry associations: that a higher size standard will allow more credit unions to participate in federal rulemaking process under RFA and SBREFA.

All four commenters representing national and state associations and other groups of credit unions and their interests strongly supported SBA's proposed increase of the size standard

for credit unions from $175 million in assets to $500 million. They were uniform in their reasons for support that the proposed size standard will offer more credit unions and their members a greater voice in the SBREFA and RFA processes. Thus, in consideration of these comments, SBA is adopting, as proposed, $500 million in assets as the size standard for credit unions (NAICS 522130).

The above commenters also urged SBA and its Office of Advocacy to support a substantial increase in the size standard that the National Credit Union Administration (NCUA) uses to define small entities for its programs. They also urged NCUA to review its size standards more frequently and use the same SBA established size threshold as other federal agencies for purposes of the RFA and similar regulatory analyses. While SBA and its Office of Advocacy promote the interests of small entities, these issues are beyond the scope of this rule. SBA's size standards regulations provide that for purposes of conducting an RFA federal agencies may, after consultation with SBA's Office of Advocacy, establish a size standard different from SBA's size standards, one that is more appropriate for its analysis (13 CFR 121.903(c)).

The fifth comment was from the organization representing lenders that offer online consumer short-term loans and related products and services, including finance companies, mortgage bankers, payday lenders, auto finance companies, and other specialty finance companies, which fall under NAICS 522291, Consumer Lending. These are non-depository entities and are subject to, as the commenter indicated, federal consumer protection regulations. Although the association supported SBA's proposal to increase the size standard for NAICS 522291 from $7 million in average annual receipts to $35.5 million, it contended that for size standards purposes this industry should be treated the same as depository financial institutions, because both depository and non-depository institutions operate and compete with one another in the same marketplace. It urged SBA to reconsider changing the size standard for NAICS 522291 from receipts to assets and apply the same size standard of $500 million in assets that SBA proposed for all depository institutions and credit cards issuing companies. The commenter argued that ''assets'' is a better measure of size than ''receipts'' for all lending institutions.

The commenter stated that SBA's size standards have become more important now than in the past because they are used to determine the supervisory jurisdiction of the CFPB and to determine which companies are permitted to participate on small business panels about certain CFPB's regulations. The commenter added that SBA's table of size standards is a default basis for defining what constitutes a small entity for SBREFA purposes and that neither CFPB nor SBREFA existed when size standards were first created for financial industries. The organization concluded that a common size standard of $500 million in assets for both depository and non-depository institutions will help level the playing field for different types of financial institutions.

SBA does not accept the commenter's recommendation for three reasons. First, when establishing a size standard, SBA considers similarity of products and services provided by different industries and may consider establishing a common size standard for certain closely related industries if supported by industry analysis. With the advent of online banking and lending and the emergence of new financial products and services, SBA agrees that the distinction between depository and non-depository financial institutions may have decreased with respect to types of services and products offered. However, the data show significant differences in the industry structure for depository and non-depository institutions, which does not support the creation of a common size standard, as recommended by the commenter. For example, based on 2007 Economic Census, Depository Institutions averaged 137 employees and $49 million revenue, as compared to 35 employees and $23 million revenue for Non-depository Institutions (excluding the credit card issuing industry for which SBA has an assets based size standard). Firms in the consumer lending industry (NAICS 522291) were even more different, averaging only 28 employees and about $12 million revenue. These results clearly do not support the same size standard for NAICS 522291 as that for depository institutions. Second, assets data are not available for non-depository institutions, while receipts data are readily available from the Economic Census. Third, based on the 2007 Economic Census, under the proposed $35.5 million receipts based size standard, more than 96 percent of firms in NAICS 522291 will qualify as small and be eligible to participate in the SBREFA process and benefit from other provisions to support small entities. For comparison, about 92 percent of firms are considered small under the current $7 million size standard. With the proposed increase, about 175 additional firms that are large under the current size standard for NAICS 522291 will become small and be eligible to participate in the SBREFA process. Thus, SBA is retaining the receipts based size standard for NAICS 522291 and increasing it from $7 million to $35.5 million, as proposed.

Conclusion:

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, as discussed above, SBA has decided to increase assets based and receipts based size standards for 37 industries in NAICS Sector 52. Since there were no comments to SBA's proposal to increase the receipts based size standards for the two industries in NAICS Sector 55, SBA is also adopting them as proposed.

Additionally, SBA had proposed to change the size measure from average assets to average receipts for NAICS 522293, International Trade Financing, by replacing the current $175 million assets based size standard with a $35.5 million receipts based size standard. As detailed in the proposed rule, SBA proposed this change based on its review of available industry data. Since SBA received no comments against the proposed change, SBA is adopting the $35.5 million receipts based size standard for NAICS 522293, as proposed. Those industries and their revised size standards are shown Table 1, Summary of Revised Size Standards in NAICS Sectors 52 and 55, below.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTORS 52 AND 55

NAICS Code	NAICS Title	Current size standard ($ million)	Revised size standard ($ million)
522110	Commercial Banking [8]	$175 million in assets [8]	$500 million in assets.[8]
522120	Savings Institutions [8]	$175 million in assets [8]	$500 million in assets.[8]
522130	Credit Unions [8]	$175 million in assets [8]	$500 million in assets.[8]
522190	Other Depository Credit intermediation [8]	$175 million in assets [8]	$500 million in assets.[8]

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTORS 52 AND 55—Continued

NAICS Code	NAICS Title	Current size standard ($ million)	Revised size standard ($ million)
522210	Credit Card Issuing [8]	$175 million in assets [8]	$500 million in assets.[8]
522220	Sales Financing	$7.0	$35.5.
522291	Consumer Lending	$7.0	$35.5.
522292	Real Estate Credit	$7.0	$35.5.
522293	International Trade Financing	$175 million in assets [8]	$35.5.
522294	Secondary Market Financing	$7.0	$35.5.
522298	All Other Non-depository Credit Intermediation	$7.0	$35.5.
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities.	$7.0	$35.5.
522390	Other Activities Related to Credit Intermediation	$7.0	$19.0.
523110	Investment Banking and Securities Dealing	$7.0	$35.5.
523120	Securities Brokerage	$7.0	$35.5.
523130	Commodity Contracts Dealing	$7.0	$35.5.
523140	Commodity Contracts Brokerage	$7.0	$35.5.
523210	Securities and Commodity Exchanges	$7.0	$35.5.
523910	Miscellaneous Intermediation	$7.0	$35.5.
523920	Portfolio Management	$7.0	$35.5.
523930	Investment Advice	$7.0	$35.5.
523991	Trust, Fiduciary and Custody Activities	$7.0	$35.5.
523999	Miscellaneous Financial Investment Activities	$7.0	$35.5.
524113	Direct Life Insurance Carriers	$7.0	$35.5.
524114	Direct Health and Medical Insurance Carriers	$7.0	$35.5.
524127	Direct Title Insurance Carriers	$7.0	$35.5.
524128	Other Direct Insurance (except Life, Health and Medical) Carriers.	$7.0	$35.5.
524130	Reinsurance Carriers	$7.0	$35.5.
524291	Claims Adjusting	$7.0	$19.0.
524292	Third Party Administration of Insurance and Pension Funds	$7.0	$30.0.
524298	All Other Insurance Related Activities	$7.0	$14.0.
525110	Pension Funds	$7.0	$30.0.
525120	Health and Welfare Funds	$7.0	$30.0.
525190	Other Insurance Funds	$7.0	$30.0.
525910	Open-End Investment Funds	$7.0	$30.0.
525920	Trusts, Estates, and Agency Accounts	$7.0	$30.0.
525990	Other Financial Vehicles	$7.0	$30.0.
551111	Offices of Bank Holding Companies	$7.0	$19.0.
551112	Offices of Other Holding Companies	$7.0	$19.0.

For the reasons stated above and in the proposed rule, SBA has decided to retain the current receipts based size standard for NAICS 524210, Insurance Agencies and Brokerages, for which analytical results suggested lowering it. Maintaining the current size standard for NAICS 524210 is consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597, (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604, (October 6, 2010)); NAICS Sector 81, Other Services (75 FR 61591, (October 6, 2010)); NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)); NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)); NAICS Sector 51, Information (77 FR 72702 (December 6, 2012)); NAICS Sector 53, Real Estate and Rental and Leasing (77 FR 88747 (September 24, 2012)); NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (77 FR 72691 (December 6, 2012)); NAICS Sector 61, Educational Services (77 FR 58739 (September 24, 2012)); and NAICS Sector 62, Health Care and Social Assistance (77 FR 58755 (September 24, 2012)).

SBA is also retaining the existing receipts based size standard for one industry in NAICS Sector 52 for which the results supported it at its current level. As stated earlier, SBA did not review NAICS 524126, Direct Property and Casualty Insurance Carriers, that has an employee based size standard, which the Agency will review in the near future with other employee based standards. Until then, SBA is retaining the current employee based size standard for that industry.

Finally, SBA is deleting NAICS 525930, Real Estate Investment Trusts (REIT), from its table of size standards because the NAICS code no longer exists. In its 2007 NAICS update, OMB deleted NAICS 525930 and incorporated its various activities in NAICS 525990, NAICS 531110, NAICS 531120, NAICS 531130, and NAICS 531190. SBA has analyzed and addressed the size standards for all of those industries and the activities formerly included in NAICS 525930. In this rule, SBA is increasing the size standard for NAICS 525990 to $30 million. SBA's September 24, 2012 final rule on Sector 53, Real Estate, Rental, and Leasing (77 FR 58747), established a $25.5 million size standard for the other four industries which include REIT activities.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. In order to help explain the need of this rule and its potential benefits and costs, SBA is providing below a Cost Benefit Analysis of the rule. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

The size standards revisions in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises, will better reflect the economic characteristics of small businesses and the Federal Government marketplace in those Sectors. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (the Act) (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The Small Business Jobs Act of 2010 also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this final rule and the proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this final rule is gaining eligibility for federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), Economically Disadvantaged Women Owned Small Businesses (EDWOSB) and service-disabled veteran-owned small businesses (SDVOSB). These programs help small businesses become more knowledgeable, stable, and competitive. Other federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. SBA is increasing 33 receipts based size standards in Sector 52 and Sector 55. SBA estimates that more than 5,400 firms, not small under current size standards, will become small and therefore eligible for these programs. That is about 2.2 percent of all firms classified as small under the current receipts based size standards in NAICS Sectors 52 and 55. This will increase the small business share of total receipts of all industries with receipts based size standards within NAICS Sectors 52 and 55 from 5.1 percent under the current size standards to 7.5 percent under the revised size standards. Additionally, due to the increase to the assets based size standard from $175 million to $500 million for four industries in NAICS Sector 52 (i.e., NAICS 522110, 522120, 522190 and 522210), approximately 2,000 additional depository institutions, including about 25 minority owned financial institutions, will qualify as small. This will increase the small business share of total assets in those industries from 2.5 percent under the current assets based size standard to 7 percent for all financial institutions and from 14.4 percent to 33 percent for minority owned institutions. In addition, the increase from $175 million to $500 million in assets will enable about 550 credit unions to obtain small entity status. However, because they are organized as not-for-profit entities, they would not qualify for federal programs intended for small business concerns (see 13 CFR 121.105). They may be eligible for other federal programs and regulatory purposes for which being organized as not-for-profit entities is not a limiting factor.

The following groups will benefit from the revisions to size standards adopted in this rule: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; (3) federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs; (4) prime contractors that could benefit from agreements with the minority owned depository institutions in meeting their subcontracting goals and credits; and (5) potentially small business communities could benefit from increased banking activities in the area.

SBA estimates that firms gaining small business status under the revised size standards could receive federal contracts totaling $8 million to $10 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB and EDWOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008–2010 data, SBA estimates up to 30 additional loans totaling about $4 million to $5 million in federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is impractical to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of the revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster (EID) Loan Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

To the extent that those 7,400 newly defined small firms (including 5,400 firms under the receipts based size standards in 33 industries and 2,000 firms under the assets based size standards in four industries) could become active in federal procurement programs, the revised size standards may entail some additional administrative costs to the government associated with there being more bidders on small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Systems of Award Management's (SAM) Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB and EDWOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. SBA believes that these

added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, some Federal Government contracts may have higher costs. With a greater number of businesses defined as small under the revised size standards, federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB and EDWOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The size standards revisions may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some federal contracts to small businesses from large businesses. Large businesses may have fewer federal contract opportunities as federal agencies decide to set aside more federal contracts for small businesses. In addition, some federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The revisions to the existing size standards in NAICS Sectors 52 and 55 that are adopted in this final rule are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA presented its size standards methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with a number of industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review. Moreover, SBA presented the same information to Department of Defense (DoD) contracting personnel at their annual training conference. It included updates on what size standards SBA was currently reviewing and its plans to review in the future.

Furthermore, when SBA issued the proposed rule, it notified by email the individuals, government procurement personnel, and companies that had in recent years exhibited an interest in size standards for NAICS Sectors 52 and 55 so they could comment.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and federal agencies in preparing the proposed rule and this final rule.

The review of size standards in NAICS Sectors 52 and 55 is consistent with EO 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and federal agencies. SBA recognizes that changes in industry structure and the federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final 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. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small businesses in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises. As described above, this final rule may affect small businesses seeking federal contracts, loans under SBA's 7(a), 504 and EID Loan Programs, and assistance under other federal small business programs, as well as subcontracting programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sectors 52 and 55. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this final rule more appropriately reflect the size of businesses that need federal assistance. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

SBA estimates that more than 5,400 additional firms will become small because of revisions to receipts based size standards for 33 industries in NAICS Sectors 52 and 55. That represents 2.2 percent of total firms that are small under current receipts based size standards in all industries within these Sectors. This will result in an increase in the small business share of total receipts in those industries from 5.1 percent under the current size standards to 7.5 percent under the revised size standards. Additionally, due to the increase in the assets based size standard for four industries within NAICS Sector 52 about 2,000 additional financial institutions will qualify as small, including about 25 minority owned financial institutions that could be eligible to participate in agreements with prime contractors for subcontracting goals and credits. In addition, about 550 additional credit unions would qualify as small entities under the $500 million assets based size standard, but they would not qualify for federal programs intended for small businesses because they are not-for profit entities. However, they may qualify as small entities for other federal programs and regulatory proposes. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with significantly larger companies. The change in size standards, as discussed herein, will have a positive competitive impact on existing small businesses and on those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The revisions to size standards impose no additional reporting or record keeping requirements on small businesses. However, qualifying for federal procurement and a number of other programs requires that entities register in the System for Award Management (SAM) database and certify at least once annually that they are small. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Revising size standards alters the access to federal programs that assist small businesses, but they neither impose a regulatory burden nor regulate nor control business behavior.

4. What are the relevant federal rules, which may duplicate, overlap or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's small business size regulations allow federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends part 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

■ a. In § 121.201, in the table, revise the entries for ''522110'', ''522120'', ''522130'', ''522190'', ''522210'', ''522220'', ''522291'', ''522292'', ''522293'', ''522294'', ''522298'', ''522320'', ''522390'', ''523110'', ''523120'', ''523130'', ''523140'', ''523210'', ''523910'', ''523920'',

''523930'', ''523991'', ''523999'', ''524113'', ''524114'', ''524127'', ''524128'', ''524130'', ''524291'', ''524292'', ''524298'', ''525110'', ''525120'', ''525190'', ''525910'', ''525920'', ''525990'', ''551111'', and ''551112''.

■ b. Remove the entry for 525930.

■ c. Revise footnote 8.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
522110	Commercial Banking [8]	[8] $500 million in assets	
522120	Savings Institutions [8]	[8] $500 million in assets	
522130	Credit Unions	[8] $500 million in assets	
522190	Other Depository Credit Intermediation [8]	[8] $500 million in assets	
522210	Credit Card Issuing [8]	[8] $500 million in assets	
522220	Sales Financing	$35.5	
522291	Consumer Lending	$35.5	
522292	Real Estate Credit	$35.5	
522293	International Trade Financing	$35.5	
522294	Secondary Market Financing	$35.5	
522298	All Other Nondepository Credit Intermediation	$35.5	
*	* * * *	*	*
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	$35.5	
522390	Other Activities Related to Credit Intermediation	$19.0	
*	* * * *	*	*
523110	Investment Banking and Securities Dealing	$35.5	
523120	Securities Brokerage	$35.5	
523130	Commodity Contracts Dealing	$35.5	
523140	Commodity Contracts Brokerage	$35.5	
523210	Securities and Commodity Exchanges	$35.5	
523910	Miscellaneous Intermediation	$35.5	
523920	Portfolio Management	$35.5	
523930	Investment Advice	$35.5	
523991	Trust, Fiduciary and Custody Activities	$35.5	
523999	Miscellaneous Financial Investment Activities	$35.5	
*	* * * *	*	*
524113	Direct Life Insurance Carriers	$35.5	
524114	Direct Health and Medical Insurance Carriers	$35.5	
*	* * * *	*	*
524127	Direct Title Insurance Carriers	$35.5	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$35.5	
524130	Reinsurance Carriers	$35.5	
*	* * * *	*	*
524291	Claims Adjusting	$19.0	
524292	Third Party Administration of Insurance and Pension Funds	$30.0	
524298	All Other Insurance Related Activities	$14.0	
*	* * * *	*	*
525110	Pension Funds	$30.0	
525120	Health and Welfare Funds	$30.0	
525190	Other Insurance Funds	$30.0	
525910	Open-End Investment Funds	$30.0	
525920	Trusts, Estates, and Agency Accounts	$30.0	
525990	Other Financial Vehicles	$30.0	
*	* * * *	*	*
551111	Offices of Bank Holding Companies	$19.0	
551112	Offices of Other Holding Companies	$19.0	

Footnotes

* * * * *

8. *NAICS Codes 522110, 522120, 522130, 522190, and 522210*—A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. ''Assets'' for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

* * * * *

Dated: June 13, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–14710 Filed 6–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG36

Small Business Size Standards: Arts, Entertainment, and Recreation

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 17 industries in North American Industry Classification System (NAICS) Sector 71, Arts, Entertainment, and Recreation, and retaining the current size standards for the remaining eight industries in that Sector. As part of its ongoing comprehensive size standards review, SBA evaluated all size standards for industries in NAICS Sector 71 to determine whether they should be retained or revised.

DATES: This rule is effective July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Jon Haitsuka, Program Analyst, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. The SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income size based standards. At the start of the current comprehensive review of SBA's small business size standards, there were 41 different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, there are a total of 1,031size standards, 516 of which are based on average annual receipts, 499 on number of employees, 10 on megawatt hours, and six on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, and in particular, that they do not reflect changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and to review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all size standards in NAICS Sector 71, Arts, Entertainment, and Recreation, to determine whether the existing size standards should be retained or revised. After its review, SBA published a proposed rule for public comment in the July 18, 2012 issue of the **Federal Register** (77 FR 42211) on its proposal to increase the size standards for 17 industries in NAICS Sector 71. The rule was one of a series of proposed rules that examines industries grouped by NAICS Sector.

In conjunction with current comprehensive size standards review, SBA developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and also included it as a supporting document in the electronic docket of the proposed rule on NAICS Sector 71 at *www.regulations.gov*.

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. For the proposed rule, SBA analyzed the characteristics of each industry in NAICS Sector 71, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contracts in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008–2010. To evaluate the impact of changes to size standards on its loan programs, SBA evaluated internal data on its guaranteed loan programs for fiscal years 2008–2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing size standards for industries in NAICS Sector 71. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that

SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's application of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

SBA sought comments on its proposal to increase size standards for 17 industries and retain the existing size standards for the remaining eight industries in NAICS Sector 71. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standard are appropriate and whether it should adopt common size standards for some industries in NAICS Sector 71.

The SBA's analyses supported keeping the current size standards for three industries and lowering them for five industries in NAICS Sector 71. However, as SBA pointed out in the proposed rule, lowering size standards will reduce the number of firms eligible to participate in Federal small business assistance programs and this is counter to what the Federal government and SBA are doing to help small businesses. Therefore, SBA proposed to retain the current size standards for those five industries and requested comments on whether the Agency should lower size standards for which its analyses might support lowering them.

Summary of Comments

SBA received only one comment to the proposed rule. However, the commenter did not offer any comments or suggestions regarding the proposed revisions to size standards in NAICS Sector 71. Thus, SBA is not making any adjustment to proposed size standards based on this comment.

The comment to the proposed rule is available for public review at *http://www.regulations.gov,* using RIN–3245–AG36.

Conclusion

Based on the analyses of relevant industry and program data and evaluation of public comments it received on the proposed rule, SBA has decided to increase the small business size standards for 17 industries in NAICS Sector 71 to the levels it proposed. Those industries and their revised size standards are shown in Table 1, Summary of Revised Size Standards in NAICS Sector 71, below.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 71

NAICS Industry code	NAICS Industry title	Current size standard ($ million)	Revised size standard ($ million)
711110	Theater Companies and Dinner Theaters	$7.0	$19.0
711120	Dance Companies	$7.0	$10.0
711130	Musical Groups and Artists	$7.0	$10.0
711190	Other Performing Arts Companies	$7.0	$25.5
711211	Sports Teams and Clubs	$7.0	$35.5
711212	Race Tracks	$7.0	$35.5
711219	Other Spectator Sports	$7.0	$10.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$7.0	$30.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$7.0	$14.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$7.0	$10.0
712110	Museums	$7.0	$25.5
712130	Zoos and Botanical Gardens	$7.0	$25.5
713110	Amusement and Theme Parks	$7.0	$35.5
713210	Casinos (except Casino Hotels)	$7.0	$25.5
713290	Other Gambling Industries	$7.0	$30.0
713910	Golf Courses and Country Clubs	$7.0	$14.0
713920	Skiing Facilities	$7.0	$25.5

For the reasons as stated above in this final rule and in the proposed rule, SBA has decided to retain the current receipts based size standards for the five industries for which analytical results suggested lowering them. The five industries are the following: NAICS 711510, Independent Artists, Writers, and Performers; NAICS 712120, Historical Sites; NAICS 712190, Nature Parks and Other Similar Institutions; NAICS 713120, Amusement Arcades; and NAICS 713990, All Other Amusement and Recreation Industries. Not lowering size standards for these industries in NAICS Sector 71 is consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597 (October 6, 2010)), NAICS Sector 72, Accommodation and Food Services (75 FR 61604 (October 6, 2010)), NAICS Sector 81, Other Services (75 FR 61591 (October 6, 2010)), NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)), NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)), NAICS Sector 53, Real Estate and Rental and Leasing (77 FR 58747 (September 24, 2012)), NAICS Sector 61, Educational Services (77 FR 58739 (September 24, 2012)), NAICS Sector 62, Health Care and Social Assistance (77 FR 58755 (September 24, 2012)), NAICS Sector 51, Information (77 FR 72702 (December 6, 2012)), and NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (77 FR 72691 (December 6, 2012)). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons. SBA is also retaining the existing size standards for three industries for which the results supported them at their current levels. The three industries are the following: NAICS 713930, Marinas; NAICS 713940, Fitness and Recreational Sports Centers; and NAICS 713950, Bowling Centers.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order

12866. In order to help explain the need of this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis in of this rule. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 17 industries in NAICS Sector 71, Arts, Entertainment, and Recreation, reflect changes in economic characteristics of small businesses and the Federal procurement market conditions in those industries. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegated to the SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. The Jobs Act requires the Administrator to review at least one-third of all size standards within each 18-month period from the date of its enactment, and review all size standards at least every five years thereafter. The supplementary information section of the July 18, 2012 proposed rule and this final rule explained the SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this final rule is gaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a), small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and the service disabled veteran owned small business (SDVOSB) Programs. Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. In the 17 industries in NAICS Sector 71 for which SBA has decided to increase size standards, SBA estimates that about 1,450 additional firms will gain small business status and become eligible for these programs. That number is 1.3 percent of total firms that are classified as small under the current size standards in all 25 industries in NAICS Sector 71. SBA estimates that this will increase the small business share of total industry receipts in that Sector from 35 percent under the current size standards to 43 percent under the revised size standards.

The benefits of increasing size standards to a more appropriate level will accrue to three groups: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

Based on the data for fiscal years 2008–2010, more than 45 percent of total Federal contracting dollars spent in all industries in NAICS Sector 71 were accounted for by the 17 industries for which SBA is increasing size standards. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling up to $5 million per year under the small business, 8(a), SDB, HUBZone, WOSB, EDWOSB and SDVOSB Programs and other unrestricted procurements. The added competition for many of these procurements may also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the data for fiscal years 2008–2010, SBA estimates that approximately 15 to 20 additional loans totaling $4 million to $6 million in new Federal loan guarantees could be made to the newly defined small businesses under the revised size standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has tangible net worth that does not exceed $15 million and also has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that do not exceed $5 million. Thus, SBA finds it difficult to quantify the actual impact of the revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

To the extent that all 1,450 newly defined small firms under the revised size standards in NAICS Sector 71 could become active in Federal procurement programs, the revisions to size standards may entail some additional administrative costs to the Federal Government associated with there being more bidders for Federal small business procurement opportunities. In addition, there will be more firms seeking SBA guaranteed loans, more firms eligible for enrollment in the System for Award Management (SAM) and Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or more firms qualifying for small business, WOSB, EDWOSB, SDVOSB and SDB status. Among these newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting might result in competition among fewer total bidders, although

there will be more small businesses eligible to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of price evaluation preference. However, these additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the small business, 8(a), HUBZone, WOSB, EDWOSB or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards in NAICS Sector 71, Arts, Entertainment, and Recreation, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributions impacts that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this regulatory action, SBA presented its methodology (discussed under Supplementary Information in the proposed rule and this rule) to various industry associations and trade groups. SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. In addition, SBA also presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentations also included information on the latest status of the comprehensive size standards review and how interested parties can provide SBA with input and feedback on the size standards review. Moreover, SBA presented the same information to Department of Defense (DoD) contracting personnel at their annual training session. It included updates on what size standards rules SBA was currently reviewing and plans to review in the future. This is important because DoD contracting provides the greatest opportunities for and awards to small businesses.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the July 18, 2012 proposed rule (77 FR 42211) for NAICS Sector 71.

Furthermore, when SBA issued the proposed rule, it notified individuals, government procurement, and companies that had in recent years exhibited an interest by letter, email, or phone, in size standards for NAICS Sector 71 so they could comment.

The review of size standards in NAICS Sector 71, Arts, Entertainment, and Recreation, is consistent with Section 6 of Executive Order 13563 calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final 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. Therefore, SBA has determined that this final rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule would not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 71, Arts, Entertainment, and Recreation. As described above, this rule may affect small entities seeking

Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA's Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Most of SBA's size standards for the Arts, Entertainment, and Recreation industries had not been reviewed since the 1980s. Technological changes, productivity growth, international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support revisions to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that approximately 1,450 additional firms will become small because of increases in size standards in 17 industries in NAICS Sector 71. That represents 1.3 percent of total firms that are classified as small under the current size standards in all 25 industries in that Sector. This will result in an increase in the small business share of total industry receipts in those industries from about 35 percent under the current size standards to nearly 43 percent under the revised size standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries because of this rule. The revised size standards will enable more small businesses to retain their small business status for a longer period. Under current size standards, many small businesses may have lost their eligibility or found it difficult to compete with companies that are significantly larger than they are and this final rule attempts to correct that impact. SBA believes these changes will have a positive impact for existing small businesses and for those that have either exceeded or are about to exceed current size standards.

3. What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal programs requires that entities register in the System for Award Management (SAM). Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration. Revising size standards alters access to SBA's and other Federal programs that are designed to assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to establish different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (*see* 13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the existing system of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, 694a(9).

■ 2. In § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' revise entries for ''711110'', ''711120'', ''711130'', ''711190'', ''711211'', ''711212'', ''711219'', ''711310'', ''711320'', ''711410'', ''712110'', ''712130'', ''713110'', ''713210'', ''713290'', ''713910'', and ''713920'' to read as follows:

§ 121.201. What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
711110	Theater Companies and Dinner Theaters	$19.0	
711120	Dance Companies	$10.0	
711130	Musical Groups and Artists	$10.0	
711190	Other Performing Arts Companies	$25.5	
711211	Sports Teams and Clubs	$35.5	
711212	Race Tracks	$35.5	
711219	Other Spectator Sports	$10.0	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$30.0	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$14.0	
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$10.0	
*	* * * * *	*	*
712110	Museums	$25.5	
*	* * * * *	*	*
712130	Zoos and Botanical Gardens	$25.5	
*	* * * * *	*	*
713110	Amusement and Theme Parks	$35.5	
*	* * * * *	*	*
713210	Casinos (except Casino Hotels)	$25.5	
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Dated: June 13, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–14708 Filed 6–19–13; 8:45 am]

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No. 119 June 20, 2013

Part VI

The President

Proclamation 8994—National Small Business Week, 2013
Proclamation 8995—World Elder Abuse Awareness Day, 2013
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Memorandum of June 14, 2013—Expanding America's Leadership in Wireless Innovation

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Title 3—

The President

Proclamation 8994 of June 14, 2013

National Small Business Week, 2013

By the President of the United States of America

A Proclamation

In America, we believe that anyone willing to work hard and take risks can get their good idea off the ground and into the marketplace. It is a notion that has made our Nation bold and bright, and the best place to do business for generations—from small-town storefronts to pioneering startups that keep our country on the cutting edge. This week, we celebrate America's entrepreneurial spirit, and we recommit to helping our small businesses get ahead.

My Administration has been a proud partner in that important work from day one. We have cut taxes for small businesses 18 times, broadened their access to capital, and provided billions in loans so they can grow and hire. We have helped companies break into new markets abroad and export their products all over the world. Every step of the way, we have focused on making Government work better for business through initiatives like Startup America and BusinessUSA—groundbreaking programs that connect entrepreneurs to resources that can spur their success.

Together, we can build on that progress. At a time when abusive patent litigation is stifling economic growth and putting companies of all sizes at risk, my Administration is taking action to protect innovators and keep our patent system strong. To create more opportunities for small businesses to compete and win in the global marketplace, we are moving forward on a Trans-Pacific Partnership that will boost our exports and level the playing field for American workers. We are implementing the Affordable Care Act so small businesses can make quality, affordable health insurance available to all their employees. And in the months ahead, we will continue pushing for tax reform that supports small businesses and keeps them at the forefront of our economic recovery.

America's small businesses reflect the best of who we are as a Nation—daring and innovative, courageous and hopeful, always working hard and looking ahead for that next great idea. They are our economy's engine and our biggest source of new jobs. So this week, as entrepreneurs across our country keep striving to turn their dreams into reality, let us keep investing in them and doing everything we can to help our small businesses succeed.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 16 through June 22, 2013, as National Small Business Week. I call upon all Americans to recognize the contributions of small businesses to the competitiveness of the American economy with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–14968
Filed 6–19–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8995 of June 14, 2013

World Elder Abuse Awareness Day, 2013

By the President of the United States of America

A Proclamation

After a lifetime of hard work and sacrifice, every American should be able to enjoy their golden years with dignity and security. But too often, senior citizens are the victims of abuse, neglect, or financial exploitation. Elder abuse is a global public health problem that affects people of every background and culture, and while it often occurs in silence, it takes a devastating toll on millions of older Americans each year. On World Elder Abuse Awareness Day, we reaffirm our commitment to ending this crime in all its forms.

My Administration is a determined advocate for older Americans. Through the Elder Justice Act, which was enacted as part of the Affordable Care Act, we are working to prevent elder abuse, neglect, and exploitation. States and tribes are investigating risk factors for abuse and neglect and identifying strategies to stop it. We convened the Elder Justice Coordinating Council to better focus prevention efforts across the Federal Government. We are committed to combatting exploitation by empowering seniors to meet financial challenges and helping them avoid scams. And we continue to pursue a rigorous criminal justice response to elder abuse, neglect, and exploitation—one that holds offenders accountable, gives professionals meaningful training, and ensures victims get the help they need.

Older Americans have steered our Nation through times of hardship and war, and ushered in eras of progress and prosperity. Today, let us stand up and speak out on their behalf, and meet our responsibility to show our elders the care and respect they deserve.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 15, 2013, as World Elder Abuse Awareness Day. I call upon all Americans to observe this day by learning the signs of elder abuse, neglect, and exploitation, and by raising awareness about this growing public health issue.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–14969
Filed 6–19–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8996 of June 14, 2013

Father's Day, 2013

By the President of the United States of America

A Proclamation

Each day, men from every walk of life pour themselves into the hard, proud, rewarding work of raising our sons and daughters. And each June, families all across our country pause to say thanks and let fathers know how much they mean to us—not just as partners or providers, but also as loving parents who never stop striving to give their kids the best life has to offer.

We see that sense of commitment throughout our communities. We see it in our schools, where dads attend assemblies and parent-teacher conferences, and help out with homework. We see it on our playing fields and in our congregations, where fathers instill the life lessons that set our kids on a path to success. We see it in parents working a second job or taking on an extra shift, putting a little away so their children can go to college. And we see it in mentors and tutors and foster dads, taking on the duties of fatherhood for young people in need.

That work is rarely easy. But we know it adds up, building character in our children and instilling in them qualities to last a lifetime: love and hope, courage and discipline, trust in themselves and others. As fathers, teaching those values is our first task. Yet too often, boys and girls are growing up without the support of their fathers. We know our country can do better. So as men in every corner of America keep stepping up and being present in the lives of our children, my Administration will keep striving to support them.

Today, we rededicate ourselves to that important work. And as sons and daughters, let us show our lasting gratitude to the men who have shaped us, who lift our sights, and who enrich our lives with a father's love, day after day.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 16, 2013, as Father's Day. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–14970
Filed 6–19–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Memorandum of June 14, 2013

Expanding America's Leadership in Wireless Innovation

Memorandum for the Heads of Executive Departments and Agencies

A combination of American entrepreneurship and innovation, private investment, and smart policy has positioned the United States as the global leader in wireless broadband technologies. Expanding the availability of spectrum for innovative and flexible commercial uses, including for broadband services, will further promote our Nation's economic development by providing citizens and businesses with greater speed and availability of coverage, encourage further development of cutting-edge wireless technologies, applications, and services, and help reduce usage charges for households and businesses. We must continue to make additional spectrum available as promptly as possible for the benefit of consumers and businesses. At the same time, we must ensure that Federal, State, local, tribal, and territorial governments are able to maintain mission critical capabilities that depend on spectrum today, as well as effectively and efficiently meet future requirements.

In my memorandum of June 28, 2010 (Unleashing the Wireless Broadband Revolution), I directed the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), to collaborate with the Federal Communications Commission (FCC) to make 500 MHz of Federal and nonfederal spectrum available for wireless broadband use within 10 years. Executive departments and agencies (agencies), including NTIA, have done an excellent job of pursuing the twin goals of advancing their agency missions and promoting innovation and economic growth. Although existing efforts will almost double the amount of spectrum available for wireless broadband, we must make available even more spectrum and create new avenues for wireless innovation. One means of doing so is by allowing and encouraging shared access to spectrum that is currently allocated exclusively for Federal use. Where technically and economically feasible, sharing can and should be used to enhance efficiency among all users and expedite commercial access to additional spectrum bands, subject to adequate interference protection for Federal users, especially users with national security, law enforcement, and safety-of-life responsibilities. In order to meet growing Federal spectrum requirements, we should also seek to eliminate restrictions on commercial carriers' ability to negotiate sharing arrangements with agencies. To further these efforts, while still safeguarding protected incumbent systems that are vital to Federal interests and economic growth, this memorandum directs agencies and offices to take a number of additional actions to accelerate shared access to spectrum.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.,* and in order to promote economy and efficiency in Federal procurement, I hereby direct the following:

Section 1. *Spectrum Policy Team.* (a) The Chief Technology Officer and the Director of the National Economic Council, or their designees, shall co-chair a Spectrum Policy Team that shall include representatives from the Office of Management and Budget (OMB), the National Security Staff, and the Council of Economic Advisers. The Spectrum Policy Team shall work with NTIA to implement this memorandum. The Spectrum Policy Team may invite the FCC to provide advice and assistance.

(b) The Spectrum Policy Team shall monitor and support advances in spectrum sharing policies and technologies. Within 1 year of the date of this memorandum, the Spectrum Policy Team shall publish a report describing how NTIA and FCC are incorporating spectrum sharing into their spectrum management practices. The report shall include recommendations that enable more productive uses of spectrum throughout our economy and society and protect the current and future mission capabilities of agencies. The Spectrum Policy Team shall also assess national security, law enforcement, safety-of-life, economic, scientific, social, international, and other policy considerations related to licensed and unlicensed spectrum use, including standardization as well as the extent to which the revenue potential of spectrum auctions affects spectrum policy.

Sec. 2. *Collaboration on Spectrum Sharing.* (a) The Secretary of Commerce, working through NTIA, has been facilitating discussions between agencies and nonfederal entities that have produced an unprecedented level of information-sharing and collaboration to identify opportunities for agencies to relinquish or share spectrum, currently focusing on the 1695–1710 MHz band, the 1755–1850 MHz band, and the 5350–5470 and 5850–5925 MHz bands. The NTIA shall continue to facilitate these discussions and the sharing of data to expedite commercial entry into these bands where possible, provided that the mission capabilities of Federal systems designed to operate in these bands are maintained and protected, including through relocation, either to alternative spectrum or non-spectrum dependent systems, or through acceptable sharing arrangements. These discussions shall also be expanded to encompass more spectrum bands that may be candidates for shared access, specifically those in the range below 6 GHz, subject to the protection of the capabilities of Federal systems designed to operate in those bands.

(b) Within 3 months of the date of this memorandum, the Secretary of Commerce, working through NTIA and the National Institute of Standards and Technology (NIST), and building on the results from the Networking and Information Technology Research and Development Program, shall publish an inventory and description of Federal test facilities available to commercial and other stakeholders engaged in research, development, testing, and evaluation of technologies to enhance spectrum sharing and other spectrum-related efficiencies. To maximize the productive use of these facilities and to facilitate greater collaboration among agencies and nonfederal stakeholders, the Secretary of Commerce, working through NTIA, NIST, and other appropriate agencies, shall, within 6 months of the date of this memorandum, establish a plan for the development and promulgation of standard policies, best practices, and templates governing the following: research, development, testing, and evaluation of spectrum sharing technologies by and among commercial, Government, and academic stakeholders at Federal facilities.

(c) All policies, practices, and templates shall be subject to safeguards reasonably necessary to protect classified, sensitive, and proprietary data. Within 6 months of the date of this memorandum, the Spectrum Policy Team, in consultation with the Department of Justice, the National Archives and Records Administration, the Office of the Director of National Intelligence, and other appropriate agencies, shall, consistent with applicable law, including 5 U.S.C. 552, as amended by Public Law 107–306 and Public Law 11–175, and Executive Order 13526 of December 29, 2009 (Classified National Security Information), implement policies for the sharing with authorized nonfederal parties of classified, sensitive, or proprietary data regarding assignments, utilization of spectrum, system configurations, business plans, and other information.

Sec. 3. *Agency Usage of Spectrum.* (a) The NTIA, in consultation with the Spectrum Policy Team and appropriate agencies, shall include in its *Fourth Interim Report* required by section 1(d) of my memorandum of June 28, 2010, a plan directing applicable agencies to provide quantitative assessments of the actual usage of spectrum in those spectrum bands that NTIA previously identified and prioritized in its *Third Interim Report* and such

other bands as NTIA and the Spectrum Policy Team determine have the greatest potential to be shared with nonfederal users. Each agency's assessment shall be prepared according to such metrics and other parameters as are reasonably necessary to determine the extent to which spectrum assigned to the agency could potentially be made available for sharing with or release to commercial users, particularly in major metropolitan areas, without adversely affecting agencies' missions, especially those related to national security, law enforcement, and safety of life. Each assessment shall also include a discussion of projected increases in spectrum usage and needs and shall identify where access to nonfederal spectrum could aid in fulfilling agency missions. The plan shall further require each agency to submit its assessments to NTIA and the Spectrum Policy Team within 12 months of the plan's release. In identifying spectrum bands with the greatest potential to be shared, NTIA and the Spectrum Policy Team shall consider the number and nature of Federal and nonfederal systems in a band, the technical suitability of the band for shared use, international implications, any potential for relocating Federal systems to comparable spectrum or otherwise enabling comparable capabilities, and other factors NTIA and the Spectrum Policy Team deem relevant based on consultation with agencies and other stakeholders. A band shall be identified as a candidate for shared access under this subsection only if it has been likewise identified under section 2(a) of this memorandum.

(b) The reporting of information under this section shall be subject to existing safeguards protecting classified, sensitive, and proprietary data. The NTIA shall release a summary of the assessments publicly to the extent consistent with law. The NTIA and the Spectrum Policy Team shall make any appropriate recommendations regarding the possible availability of spectrum in the subject bands for innovative and flexible commercial uses, including broadband, taking into account factors such as the nature of the Federal systems in the bands and the extent to which those systems occupy and use the bands.

(c) The NTIA shall design and conduct a pilot program to monitor spectrum usage in real time in selected communities throughout the country to determine whether a comprehensive monitoring program in major metropolitan areas could disclose opportunities for more efficient spectrum access, including via sharing. The NTIA shall work with agencies to ensure the program will not reveal sensitive or classified information. The NTIA shall consult with each agency to determine the correct technical parameters to monitor usage.

(d) Within 6 months of the date of this memorandum, NTIA shall take such actions as are necessary to require that each agency's regular reviews of its frequency assignments include a quantitative assessment of its actual usage of spectrum under such assignments.

(e) The NTIA shall also take such actions as are necessary to require that an agency requesting a frequency assignment or spectrum certification for systems operating between 400 MHz and 6 GHz verify that it must operate in this critical range, and that it will use the minimum spectrum reasonably necessary to most effectively meet mission requirements. The requesting agency shall also verify that it is not reasonable to satisfy such requirements in some other manner, such as at higher frequencies, via commercial services, or via a system that is not spectrum-dependent, whether due to cost, technology, implementation, performance reasons, international obligations, or other practical or legal constraints. In the case of system certification requests only, the requesting agency shall also present with its request a narrative explaining why its proposed solution will most effectively meet its mission requirements, in light of potential alternative approaches and all practical and legal constraints. Further, requesting agencies shall identify spectrum that will no longer be used by any legacy systems that are replaced. In implementing this subsection, NTIA shall take all steps necessary to protect against disclosure of sensitive and classified information.

Sec. 4. *Spectrum Efficiency in Procurements.* Agencies shall include spectrum efficiency when considering procurement of spectrum-dependent systems and hardware, as a technical requirement, an evaluation criterion for award, or both. The Director of OMB, in consultation with NTIA, shall develop and incorporate spectrum efficiency guidelines into budget and procurement processes. These guidelines shall facilitate, as appropriate, the design and procurement of systems that increase flexibility through means such as multiple-band tuning capabilities and the use of commercial systems. The guidelines also shall require, to the extent possible, procurements of Federal systems such that emission levels resulting from reasonable use of adjacent spectrum will not impair the functioning of such systems, consistent with any applicable radio receiver performance criteria and international obligations.

Sec. 5. *Performance Criteria for Radio Receivers.* The FCC is strongly encouraged, in consultation with NTIA, where appropriate, the industry, and other stakeholders, to develop to the fullest extent of its legal authority a program of performance criteria, ratings, and other measures, including standards, to encourage the design, manufacture, and sale of radio receivers such that emission levels resulting from reasonable use of adjacent spectrum will not endanger the functioning of the receiver or seriously degrade, obstruct, or repeatedly interrupt the operations of the receiver. In developing such a program, the FCC is strongly encouraged to give due consideration to existing policies and prudent investments that have been previously made in systems, including receivers. In its consultation with the FCC, NTIA shall provide information regarding Federal receiver standards and agency practices under those standards.

Sec. 6. *Incentives for Agencies.* The Spectrum Policy Team shall, within 6 months of the date of this memorandum, publish a report making recommendations to the President regarding market-based or other approaches that could give agencies greater incentive to share or relinquish spectrum, while protecting the mission capabilities of existing and future systems that rely on spectrum use. The report shall consider whether the Spectrum Currency and Spectrum Efficiency Fund proposals made by the President's Council of Advisors on Science and Technology would be effective. The report shall also analyze the impact of the Commercial Spectrum Enhancement Act of 2004 (Title II of Public Law 108–494), as modified by the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96).

Sec. 7. *Rapid Deployment of Wireless Broadband.* The FCC is strongly encouraged, in collaboration with NTIA, where appropriate, to expedite the repurposing of spectrum and otherwise enable innovative and flexible commercial uses of spectrum, including broadband, to be deployed as rapidly as possible by:

(a) identifying spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users;

(b) identifying spectrum allocated for nonfederal uses that can be made available to agencies, on a shared or exclusive basis, particularly where necessary to accommodate agencies seeking to relocate systems out of bands that could be made available for licensed services or unlicensed devices;

(c) promulgating and enforcing rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance;

(d) establishing and maintaining conditions that promote a reliable secondary market for spectrum, including provisions enabling negotiated access by agencies and uses not addressed in subsection (b) of this section;

(e) promulgating and enforcing rules for licensed services and unlicensed devices to share Federal spectrum that accommodate mission changes and technology updates by both Federal and nonfederal users; and

(f) consulting with the Department of State regarding international obligations related to spectrum use.

Sec. 8. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to any agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) Nothing in this memorandum shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interest of national security or public safety.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

(f) The Presidential Memorandum of November 30, 2004 (Improving Spectrum Management for the 21st Century), is hereby revoked.

(g) The Secretary of Commerce is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 14, 2013.

[FR Doc. 2013–14971
Filed 6–19–13; 11:15 am]
Billing code 3510–07

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