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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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064—AD99

Records of Failed Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule that implements a section of the Federal Deposit Insurance Act. This statutory provision provides time frames for the retention of records of a failed insured depository institution. The final rule incorporates the statutory time frames and defines the term ''records.''

DATES: This final rule is effective October 4, 2013.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Legal Division, (703) 562–2422; Jerilyn Rogin, Legal Division, (703) 562–2409; Gregory D. Talley, Division of Resolutions and Receiverships, (703) 516–5115. Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

When acting as receiver of a failed insured depository institution, the FDIC succeeds to the books and records of the institution.[1] Section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D), hereafter ''Section 1821(d)(15)(D)'' and ''FDI Act'') provides that after the end of the six-year period beginning on the date of its appointment as receiver, the FDIC may destroy any records of a failed insured depository institution that the FDIC in its discretion determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency or prohibited by law. In addition, the FDIC may destroy any records that are at least 10 years old as of the date of appointment.

The term ''records'' is not defined in the FDI Act and the legislative history does not provide any guidance on how the term should be interpreted. A broad interpretation would encompass not only all documentary material that clearly relates to the business of the institution but also material that has no relevance to its business, or which lacks evidentiary value and would not ordinarily be considered ''records.'' In addition, advances in information technology and data storage capabilities have substantially increased the volume of material generated by financial institutions. To illustrate, a ''terabyte'' of electronically stored information (''ESI'') is the equivalent of 77 million printed pages. A typical failed insured depository institution has on its systems between 3 and 9 terabytes of ESI, or the equivalent of between 231 million and 693 million pages of material. Currently, the FDIC is housing on its recordkeeping systems 775 terabytes of data from failed insured depository institutions for which the FDIC has been appointed receiver since 2007—the equivalent of 59.675 billion pages. In addition, the FDIC is storing 133,707 boxes of paper from failed insured depository institutions, as well as 500 boxes of computer hard drives and 171 boxes of microfilm and microfiche. If the term ''records'' were interpreted to encompass all documentary material that the FDIC as receiver obtains from failed insured depository institutions regardless of its significance or evidentiary value then the capture, processing, and maintenance of ever-increasing amounts of such material would pose significant unnecessary burdens and inefficiencies both currently and in the future. Accordingly, this final rule defines the term ''records'' in order to designate more specifically the material that is subject to Section 1821(d)(15)(D), thereby enabling the FDIC to manage the records of insured depository institutions in receivership more efficiently and in a legally appropriate manner.

Authority

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities. Section 11(d)(1) of the FDI Act[2] authorizes the FDIC to ''prescribe such regulations as [it] determines to be appropriate regarding the conduct of conservatorships or receiverships.'' Additionally, section 10(g) of the FDI Act[3] authorizes the FDIC to prescribe regulations, including the defining of terms, as necessary to carry out the FDI Act.

Notice of Proposed Rulemaking

On January 15, 2013, the Board of Directors approved a notice of proposed rulemaking entitled ''Records of Failed Insured Depository Institutions''[4] which was published in the **Federal Register** on January 22, 2013, with a 60-day comment period that ended on March 25, 2013. Two comment letters were received. The contents of the comments, the FDIC's responses thereto, as well as the differences between the text of the proposed rule and the final rule are addressed below.

II. Explanation of the Final Rule

Under the final rule, documentary material will be characterized as records for purposes of Section 1821(d)(15)(D) by meeting a formal definition (paragraph (a)) and a functional test (paragraph (b)). The FDIC believes that this two-tiered approach will have the effect of excluding extraneous material that is not related in any way to the insured depository institution's business prior to its failure nor necessary to the conduct of the FDIC's receivership function.

Paragraph (a)(3) defines the term ''records'' as ''any reasonably accessible document, book, paper, map, photograph, microfiche, microfilm, and computer or electronically-created documents that were generated or maintained by an insured depository institution in the course of and necessary to its transaction of business.'' The definition is modeled on Section 210(a)(16)(D) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''the Dodd-Frank Act''),[5] which sets forth records retention requirements for covered financial company

[1] 12 U.S.C. 1821(d)(2)(A).

[2] 12 U.S.C. 1821(d)(1).

[3] 12 U.S.C. 1820(g).

[4] 78 FR 4349 (January 22, 2013).

[5] 12 U.S.C. 5390(a)(16)(D).

receiverships. The definition in the Dodd-Frank Act has been modified to adapt to FDIC's role as receiver for insured depository institutions.

The phrase ''reasonably accessible'' has been used in the definition of records in order to relieve the FDIC from incurring burdensome and unnecessary expenses associated with accessing, restoring or maintaining legacy systems of failed insured depository institutions. The FDIC often encounters proprietary non-standard computer systems at failed insured depository institutions running software that is obsolete or that would be prohibitively expensive to upgrade and maintain. The information stored on these systems is usually not of sufficient value to justify the effort and expense that would be required to maintain the systems for continued use. The phrase ''reasonably accessible'' is also consistent with Federal Rule of Civil Procedure 26(b)(2)(B) which relieves a party from whom discovery is sought from having to produce ESI from sources that are not reasonably accessible due to undue burden or cost.

One commenter appears to suggest that limiting the definition of ''records'' to reasonably accessible documents and to those generated or maintained by an insured depository institution in the course of and necessary to its transaction of business is intended to conceal evidence of the wrongdoing of individuals responsible for the recent financial crisis that began in 2008 and prevent appropriate civil and criminal actions. This definition, however, is expected to encompass the types of information that would be needed in the course of a criminal or civil investigation; moreover, the rule would expressly prevent destruction when contrary to the direction of a court or governmental agency, prohibited by law, or subject to a legal hold imposed by the FDIC. As noted above, the standards used in the proposed rule also are consistent with the Federal Rules of Civil Procedure and subsequent statutory language enacted by Congress for similar circumstances. While the FDIC does not itself generally have authority to impose criminal sanctions, it routinely works with its Office of Inspector General and the U.S. Department of Justice on criminal investigations and supports their prosecution.

In addition, for those institutions for which it is the primary Federal regulator, the FDIC uses its civil enforcement authority under the FDI Act to address unsafe or unsound acts or practices or violations of law at insured depository institutions and, when the FDIC is not the primary Federal regulator, may also coordinate on actions with the appropriate Federal banking agency. Once an insured institution fails, the FDIC also has authority to pursue civil sanctions against directors, officers, and others determined to have caused a loss to the institution. Interested members of the public may access information about the FDIC's enforcement and professional liability efforts on its Web site at: *www.fdic.gov/bank/individual/failed/pls/; www.fdic.gov/regulations/compliance/manual/pdf/II-8.1.pdf.*

The ''reasonably accessible'' limitation permits the FDIC to forego collection of documentary material that is unrelated to the core business of the institution and that has no informational or evidentiary value, such as the terabytes of technical data files that allow a computer system to operate but that have no other connection to the institution's business need not be retained or characterized as records. In addition, the limitation to reasonably accessible documents is neutral as to the content of what is considered inaccessible.

Paragraph (a)(3)(i) provides a list of examples of documents that constitute records: board or committee meeting minutes, contracts to which the institution was a party, deposit account information, employee and employee benefits information, general ledger and financial reports, litigation files and loan documents. A commenter suggested that social media and cell phones should be included in the list of examples of records. In fact, the list is non-exclusive and would not exclude those or other types or formats of information or document collection.

Paragraph (a)(3)(ii) sets forth two exclusions from records. The first exclusion is for ''multiple copies of records.'' This exclusion is meant to clarify that redundant multiple copies of the same record need not be retained as records. The second exclusion is for ''[e]xamination, operating or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of insured depository institutions.'' This exclusion is consistent with the FDIC's long-standing position that reports of examination or other confidential supervisory correspondence or information prepared by FDIC examiners or other regulators with respect to an insured depository institution belong exclusively to the FDIC or to such regulators and not to the institution, even though institutions may retain copies.

In determining whether particular material obtained from a failed insured depository institution constitutes a record, the FDIC will consider the four factors set forth in paragraph (b). In the proposed rule, the FDIC was to determine ''. . . whether one or more of the following factors weigh[ed] in favor of classifying the material as a record . . . .'' The FDIC has changed the wording of the opening phrase of paragraph (b) to clarify that the factors are to be considered together. The final rule uses the phrase ''. . . the FDIC in its discretion will consider the following factors . . . .'' to avoid the designation of documentary material as records that should not be so classified. For example, a published set of banking regulations kept at an insured depository institution would meet one factor (*i.e.,* it is related to the institution's business) even though such a set of regulations would not be needed for the receiver's functions or as evidence for purposes of Section 1821(d)(15)(D) and the final rule. The final rule clarifies that if the FDIC determines that considered together these factors weigh in favor of classifying material as a record, it will be classified as a record.

The first factor is whether the documentary material relates to the business of the failed insured depository institution. This factor is modeled after section 210(a)(16)(D)(iii) of the Dodd-Frank Act [6] defining ''records'' as material generated or maintained ''in the course of and necessary to [a covered financial company's] transaction of business.''

The second factor is whether the documentary material was generated or maintained in accordance with the insured depository institution's own recordkeeping practices and procedures or pursuant to standards established by the failed insured depository institution's regulators. Thus, the FDIC will consider whether documentary material was retained pursuant to the insured depository institution's recordkeeping practices when determining whether specific documentary material is a record for purposes of Section 1821(d)(15)(D) and the final rule. Likewise, the FDIC will consider whether documentary material was retained pursuant to standards imposed by state or federal regulators when determining whether specific documentary material is a record for purposes of Section 1821(d)(15)(D) and the final rule.

The third factor is whether the documentary material is needed by the FDIC to carry out its functions as receiver. This inquiry will permit the

[6] 12 U.S.C. 5390(a)(16)(D)(iii).

classification of documents as records when they are used by the FDIC to carry out its function as receiver to, for example, transfer the failed insured depository institution's assets or liabilities, assume or repudiate the institution's contracts, determine claims, and collect obligations owed to the institution.

The fourth factor used to determine whether documentary material should be classified as records is the expected evidentiary needs of the FDIC. Records generated and maintained by the failed insured depository institution are used to support enforcement actions and litigation. In addition, records of the insured depository institution may be required to respond to requests filed under the Freedom of Information Act. This factor is modeled on section 210(a)(16)(D)(i)(II) of the Dodd-Frank Act[7] which requires the FDIC to prescribe records retention regulations with due regard for ''the expected evidentiary needs of the Corporation as receiver of a covered financial company and the public regarding the records of covered financial companies.''

Paragraph (c) of the Final Rule explains that the FDIC's designation of material as records is solely for the purpose of identifying records that are subject to the retention requirements of Section 1821(d)(15)(D). The designation has no bearing on the discoverability or admissibility of documentary material in any court, tribunal or other adjudicative proceeding, nor on whether such documentary material is subject to the Freedom of Information Act, the Privacy Act or other law.

Paragraph (d) sets forth the time frames for permissible destruction of a failed insured depository institution's records as provided in Section 1821(d)(15)(D). After the end of the six-year period beginning on the day of its appointment as receiver, the FDIC may destroy any records of a failed insured depository institution that the FDIC in its discretion determines to be unnecessary to maintain, unless directed not to do so by a court of competent jurisdiction or governmental agency or prohibited by law. The FDIC may also destroy any records that are at least 10 years old as of the date of appointment of the receiver. This paragraph further provides that the FDIC will not destroy records subject to a legal hold[8] imposed by the FDIC. By including legal holds, the Final Rule implements the policy to preserve information (both ESI and paper) that the FDIC may be required to produce in litigation or when it is otherwise subject to a legal requirement to produce information.

Both commenters objected to the proposed rule's time frames for record destruction, asserting that records should be maintained indefinitely. All records have a time period beyond which they are no longer useful or necessary. By providing that records of an institution may be destroyed within the time frames set forth in Section 1821(d)(15)(D), Congress recognized that records retention has limits and that destruction of old records is the basis for an effective and appropriate records retention policy.[9] Using these records as evidence, the FDIC has a finite period after its appointment as receiver or conservator to bring actions against those directors, officers, and other professionals allegedly responsible for the failure of an insured depository institution using these records as evidence. Unless the time periods are expanded under state law, the FDIC has three years to bring tort claims and six years to bring breach-of-contract claims against such individuals from the date of the appointment of the FDIC as receiver for a failed insured depository institution.[10] Separately, the FDIC must bring or participate in an enforcement action against such an individual for debarment from involvement with financial institutions or for civil money penalties within five years of a culpable action or six years from the individual's separation from the insured depository institution, which depending on the timing also may involve reliance on failed bank records.[11]

Paragraph (e) includes within the statutory records retention requirement records that are in the custody of an acquiring institution or other purchaser of a failed institution's assets. It provides that the FDIC's transfer of records to a third party in connection with that party's purchase of assets or assumption of liabilities satisfies the records retention obligations of Section 1821(d)(15)(D) so long as the transfer is made in connection with a transaction involving the purchase and assumption of assets and liabilities under which the transferee agrees that it will not destroy the transferred records for at least six years from the date of the appointment of the FDIC as receiver of the failed insured depository institution unless otherwise notified in writing by the FDIC. In the proposed rule, the wording of paragraph (e) was slightly different; the reference to a purchase and assumption was preceded by ''an agreement for . . .'' This phrase was changed in the final rule to '' . . . in connection with a transaction involving the purchase and assumption of assets and liabilities . . .'' in order to clarify that such record transfers can be accomplished through vehicles other than formal purchase and assumption agreements, including all contracts with third parties for the sale, transfer or assignment of the assets and liabilities of failed insured depository institutions, such as loan sale agreements, securitizations, structured transactions, contribution agreements, and formal purchase and assumption agreements. In addition, the phrase ''at least'' was placed in the final rule preceding ''six years'' in order to clarify that in order to fulfill the requirements of Section 1821(d)(15)(D) such transferred records must be retained for six years or longer pursuant to an asset sales agreement as provided under many such existing agreements.

Paragraph (f) provides that the FDIC may establish policies and procedures with respect to the retention and destruction of records. These policies and procedures will address specific matters related to the capture, processing and storage of failed institution records, such as collecting computer hard drives, email databases, and backup and disaster recovery tapes.

It is the policy of the FDIC to evaluate the benefits and costs of its regulations in order to minimize any burden on the public or on the banking industry. The final rule consists of internal guidelines and criteria for the collection and management of records of failed insured depository institutions. The final rule's definition of the term ''records'' will obviate the need for overly broad and duplicative collection of the documentary material the FDIC encounters at failed insured depository institutions. Consequently, the final rule will result in cost savings over the near and long term consistent with the statutory mandate in Section 1821(d)(15)(D) to retain the records of failed insured depository institutions for the specified periods.

III. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* are contained in this final rule, as it

[7] 12 U.S.C. 5390(a)(16)(D)(i)(II).

[8] A legal hold is a suspension of the routine disposal of paper and electronic documents, data, and other records in any format that may be potentially relevant to litigation or other matters in which documents must be produced.

[9] As a point of comparison, Federal law requires open insured depository institutions to maintain their records for six years. 12 U.S.C. 1829b(g).

[10] 12 U.S.C. 1821(d)(14).

[11] 28 U.S.C. 2462; 12 U.S.C. 1818(i)(3).

addresses only the FDIC's obligation to maintain records in existence at the time the FDIC is appointed receiver and thereafter.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.,* requires that each Federal agency either certify that a final rule will not have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. For purposes of the RFA analysis or certification, financial institutions with total assets of $500 million or less are considered to be ''small entities.'' The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule defines the term ''records'' under section 1821(d)(15)(D) for purposes of the FDIC's own internal operations and recordkeeping, enabling it to more efficiently manage the records of an insured depository institution in receivership. Accordingly, there will be no significant economic impact on a substantial number of small entities as a result of this final rule.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L.105–277, 112 Stat. 2681).

D. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') (Pub. L. 104–121, 110 Stat.857) which provides for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA (5 U.S.C. 551 *et seq.*). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and record keeping requirements, Savings associations, Securitizations.

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(d)(15)(D), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Add § 360.11 to read as follows:

§ 360.11 Records of failed insured depository institutions.

(a) *Definitions.* For purposes of this section, the following definitions apply—

(1) *Failed insured depository institution* is an insured depository institution for which the FDIC has been appointed receiver pursuant to 12 U.S.C. 1821(c)(1).

(2) *Insured depository institution* has the same meaning as provided by 12 U.S.C. 1813(c)(2).

(3) *Records* means any reasonably accessible document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by an insured depository institution in the course of and necessary to its transaction of business.

(i) Examples of records include, without limitation, board or committee meeting minutes, contracts to which the insured depository institution was a party, deposit account information, employee and employee benefits information, general ledger and financial reports or data, litigation files, and loan documents.

(ii) Records do not include:

(A) Multiple copies of records; or

(B) Examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of insured depository institutions.

(b) *Determination of records.* In determining whether particular documentary material obtained from a failed insured depository institution is a record for purposes of 12 U.S.C. 1821(d)(15)(D), the FDIC in its discretion will consider the following factors:

(1) Whether the documentary material related to the business of the insured depository institution,

(2) Whether the documentary material was generated or maintained as records in the regular course of the business of the insured depository institution in accordance with its own recordkeeping practices and procedures or pursuant to standards established by its regulators,

(3) Whether the documentary material is needed by the FDIC to carry out its receivership function, and

(4) The expected evidentiary needs of the FDIC.

(c) The FDIC's determination that documentary material from a failed insured depository institution constitutes records is solely for the purpose of identifying that documentary material that must be maintained pursuant to 12 U.S.C. 1821(d)(15)(D) and shall not bear on the discoverability or admissibility of such documentary material in any court, tribunal or other adjudicative proceeding, nor on whether such documentary material is subject to release under the Freedom of Information Act, the Privacy Act or other law.

(d) *Destruction of records.* (1) Except as provided in paragraph (d)(2) of this section, after the end of the six-year period beginning on the date the FDIC is appointed as receiver of a failed insured depository institution, the FDIC may destroy any records of an institution which the FDIC, in its discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, prohibited by law, or subject to a legal hold imposed by the FDIC.

(2) Notwithstanding paragraph (d)(1) of this section, the FDIC may destroy records of a failed insured depository institution which are at least 10 years old as of the date on which the FDIC is appointed as the receiver of such institution in accordance with paragraph (d)(1) of this section at any time after such appointment is final, without regard to the six-year period of limitation contained in paragraph (d)(1) of this section.

(e) *Transfer of records.* If the FDIC transfers records to a third party in connection with a transaction involving the purchase and assumption of assets and liabilities of an insured depository institution, the recordkeeping requirements of 12 U.S.C.

1821(d)(15)(D), and paragraph (d) of this section shall be satisfied if the transferee agrees that it will not destroy such records for at least six years from the date the FDIC was appointed as receiver of such failed insured depository institution unless otherwise notified in writing by the FDIC.

(f) *Policies and procedures.* The FDIC may establish policies and procedures with respect to the retention and destruction of records that are consistent with this section.

Dated at Washington, DC, this 28th day of August, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–21389 Filed 9–3–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0094; Directorate Identifier 2012–NM–160–AD; Amendment 39–17573; AD 2013–17–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports that certain trimmable horizontal stabilizer actuators (THSA) were found with corrosion that affected the ballscrew lower splines between the tie-bar and screw-jack. This AD requires repetitive inspections of the THSA; ballscrew integrity tests, if necessary; and replacement of affected THSAs. We are issuing this AD to detect and correct corrosion in the ballscrew lower splines, which, if the ballscrew ruptured, could lead to transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, and possible loss of control of the airplane.

DATES: This AD becomes effective October 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 9, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on February 26, 2013 (78 FR 12988). The NPRM proposed to correct an unsafe condition for the specified products. The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0175, dated September 7, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some Trimmable Horizontal Stabilizer Actuators (THSA), Part Number (P/N) 47147–500 fitted on A330/A340 aeroplanes have been found with corrosion, affecting the ballscrew lower splines between the tie bar and the screw-jack. The affected ballscrew is made of steel and anti-corrosion protection is ensured, except on both extremities (upper and lower splines) where Molykote is applied.
>
> The results of the technical investigations have identified that the corrosion was caused by a combination of:
>
> —contact/friction between the tie bar and the inner surface of the ballscrew leading to the removal of Molykote (corrosion protection) at the level of the tie bar splines,
>
> —humidity ingress initiating surface oxidation starting from areas where Molykote is removed, and
>
> —water retention in THSA lower part leading to corrosion spread out and to the creation of a brown deposit (iron oxide).
>
> The results of the technical investigations have also concluded that A320 family THSA P/N 47145–XXX (where XXX stands for any numerical value) ballscrews might be affected by this corrosion issue.
>
> This condition, if not detected and corrected, may lead, in case of ballscrew rupture, to loss of transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires repetitive detailed inspections of the ballscrew lower splines of THSAs having P/N 47145–XXX to detect corrosion and, depending on findings, the accomplishment of applicable corrective actions.

The required actions are repetitive detailed inspections of the gaps between the ballscrew shaft and tie-rod splines of the affected THSAs to determine the corrosion category. Depending on the corrosion category, additional actions include a ballscrew shaft integrity test and replacing the THSA if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Requests To Allow Replacement of a THSA With a Part That Is Not New

Delta Airlines (DAL) and United Airlines (UAL) requested that paragraph (i) of the NPRM (78 FR 12988, February 26, 2013) be revised to delete the word ''new'' so a part other than a new part could be used to replace an affected THSA. DAL requested that the replacement requirements be changed to allow for the installation of a THSA unit overhauled using the instructions in the applicable Goodrich component maintenance manual instead of a new THSA part. DAL stated that if Type I or Type II corrosion is found on an affected THSA, the corroded ballscrew and claw (end stop) could be easily replaced if the guidance in the applicable Goodrich component maintenance manual is followed. DAL suggested that replacing the ballscrew and the claw would restore the integrity and the level of safety of the assembly. DAL also pointed out that obtaining a new THSA may be difficult because demand may outpace supply and airplanes might be grounded while waiting for parts.

UAL stated that it is not necessary to replace an affected THSA with a brand new THSA and that any THSA inspected in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012, that is determined to have Type I corrosion (i.e., no corrosion), should be acceptable as a replacement part.

We agree with both commenters' statements that affected THSAs do not need to be replaced with new parts. Our intent is that an affected THSA is replaced with a part that meets the

criteria specified in paragraph (l) of this final rule. We revised paragraphs (i)(1), (i)(2), and (i)(3) of this final rule to remove the word ''new'' and to state to replace an affected THSA with a THSA that meets the criteria specified in paragraph (l) of this final rule.

We do not agree with DAL's request to allow for the installation of a THSA unit that was overhauled using the applicable Goodrich component maintenance manual. We do not have a way to determine if an overhauled THSA is airworthy. We also disagree with UAL's recommendation that any THSA inspected in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012, that is determined to have Type I corrosion, should be acceptable as a replacement part. In addition to the inspection requirement in paragraph (h) of this final rule, we must ensure that a THSA utilized as a replacement part meets the applicable requirements in paragraphs (l)(1) and (l)(2) of this AD. No change was made to this final rule in this regard. However, we have revised paragraph (l) of this final rule to provide clarification of the criteria for parts installation.

Request To Reference Revised Vendor Service Information

Airbus requested that paragraphs (g), (h), and (i) of the NPRM (78 FR 12988, February 26, 2013) be revised to reference the current revision of the Goodrich service information. Goodrich has issued Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. Airbus noted that the definition of THSA first flight was changed in Revision 2 of Goodrich Service Bulletin 47145–27–16, dated January 7, 2013, and requested that paragraph (g) of the NPRM be revised to include this definition. Airbus also requested that credit be given for actions that were accomplished before the effective date of this final rule using Goodrich Service Bulletin 47145–27–16, dated November 7, 2011; and Revision 1, dated August 1, 2012.

We agree with the commenter's requests and have revised paragraphs (g), (h), and (i) of this final rule to reference Goodrich Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. We have also revised the definition of THSA first flight in paragraph (g) of this final rule to include the information provided in Goodrich Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. In addition, we included a new paragraph (m) to provide credit for actions done prior to the effective date of this AD using Goodrich Service Bulletin 47145–27–16, dated November 7, 2011; or Revision 1, dated August 1, 2012; and reidentified the subsequent paragraphs accordingly.

Request To Clarify When Repetitive Inspections of THSAs Should Start

UAL stated that the intent of paragraph (l)(2) of the NPRM (78 FR 12988, February 26, 2013) should be clarified to indicate that only THSAs with more than 20 years accumulated since first flight need to be inspected as required by paragraph (h) of the NPRM. UAL also asked if a THSA should accumulate 20 years since first flight before an operator must begin doing the repetitive inspections required by paragraph (h) of the NPRM.

We agree that clarification is necessary. As discussed previously, we revised paragraph (l) of this final rule, in part, to clarify that only THSAs that have accumulated 20 years or more since first flight are required to be inspected repetitively, as required by paragraph (h) of this final rule. Paragraph (h) of this final rule requires an initial inspection of the THSAs within 22 years accumulated by the THSA since the THSA's first flight, but no earlier than 20 years accumulated by the THSA since its first flight, or within three months after the effective date of this final rule, and subsequent repetitive inspections at intervals not to exceed 24 months.

Request To Revise Reporting Requirement

UAL requested that the reporting requirement in paragraph (k) of the NPRM (78 FR 12988, February 26, 2013) be deleted if an inspection finding reveals that the THSA has Type I corrosion (i.e., no corrosion). UAL stated that only findings of Type II and Type III corrosion should be reported.

We disagree that only findings of Type II and Type III corrosion should be reported. Airbus has not determined terminating action for the repetitive inspections required by this final rule, and reports of Type I corrosion will be a factor in Airbus's decision. No change was made to this final rule.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 12988, February 26, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 12988, February 26, 2013).

Costs of Compliance

We estimate that this AD affects 755 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $256,700, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $2,203, for a cost of $3,478 per product. We have no way of determining the number of products that may need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave., SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–17–09 Airbus: Amendment 39–17573. Docket No. FAA–2013–0094; Directorate Identifier 2012–NM–160–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 9, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports that certain trimmable horizontal stabilizer actuators (THSA) were found with corrosion that affected the ballscrew lower splines between the tie-bar and screw-jack. We are issuing this AD to detect and correct corrosion in the ballscrew lower splines, which, if the ballscrew ruptured, could lead to transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, and possible loss of control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Definition of THSA First Flight

For the purposes of this AD, the definition of THSA first flight is the THSA ''entry into service date,'' which is the date of the first flight of the airplane on which the THSA was originally fitted in production. All entry into service dates are included in the table that appears after the Accomplishment Instructions in Goodrich Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. If the entry into service date is not included in this table, use the manufacturing date engraved on the THSA's identification plate as the ''entry into service date.''

(h) Repetitive Inspections

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD: Do a detailed inspection of the gaps between the ballscrew shaft and tie-rod splines on any THSA having P/N 47145–XXX (where XXX stands for any numerical value) to determine if the corrosion category is Type I, Type II, or Type III, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012; and the Accomplishment Instructions and the flowchart following the Accomplishment Instructions of Goodrich Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. Repeat the inspection thereafter at intervals not to exceed 24 months.

(1) Within 22 years accumulated by the THSA since the THSA's first flight, but no earlier than 20 years accumulated by the THSA since its first flight.

(2) Within three months after the effective date of this AD.

(i) Ballscrew Integrity Test and Corrective Actions

If, during any inspection required by paragraph (h) of this AD, it is determined that a THSA has Type II or Type III corrosion: Before further flight, do a ballscrew integrity test, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012; and the Accomplishment Instructions and the flowchart following the Accomplishment Instructions of Goodrich Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. If Type I corrosion is found, no action is required by this paragraph.

(1) For THSAs having Type II or Type III corrosion and for which the results of the ballscrew integrity test are not correct, as specified in Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012: Before further flight, replace the affected THSA with a THSA that meets the criteria specified in paragraph (l) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(2) For THSAs having Type III corrosion and on which the results of the ballscrew integrity test are correct, as specified in Airbus Service Bulletin A320 27–1214, including Appendix 01, dated February 23, 2012: Within 10 days after the most recent inspection, replace the THSA with a THSA that meets the criteria specified in paragraph (l) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(3) For THSAs having Type II corrosion and on which the results of the ballscrew integrity test are correct, as specified in Airbus Service Bulletin A320 27–1214, including Appendix 01, dated February 23, 2012: Within 24 months or 5,000 flight cycles after the most recent inspection, whichever occurs first, replace the THSA with a THSA that meets the criteria specified in paragraph (l) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(j) Replacement of a THSA is not Terminating Action

Replacement of a THSA, as required by paragraph (i) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD.

(k) Reporting Requirement

If any corrosion type is found during any inspection required by paragraph (h) of this AD, at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, report the findings to Airbus, Customer Services

Engineering—SEEL5, Flight Control Systems A320 Family, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 25. The report must include the information specified in Appendix 01 of Airbus Service Bulletin A320–27–1214.

(1) If the inspection was done on or after the effective date of this AD: Within 90 days after that inspection.

(2) If the inspection was done before the effective date of this AD: Within 90 days after the effective date of this AD.

(l) Parts Installation Limitations

As of the effective date of this AD, no person may install a THSA having P/N 47145–XXX (where XXX stands for any numerical value) on any airplane, unless that THSA meets the applicable criteria specified in paragraph (l)(1) or (l)(2) of this AD.

(1) The THSA must not have accumulated 20 years or more since the THSA's first flight, and after installation must be inspected as required by paragraph (h) of this AD, at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, and be inspected thereafter at intervals not to exceed 24 months as required by paragraph (h) of this AD; and any applicable actions specified in paragraph (i) of this AD must be accomplished.

(2) If the THSA has accumulated 20 years or more since the THSA's first flight, it must have been inspected before installation as required by paragraph (h) of this AD and determined to have Type I corrosion (if the screw shaft lower splines thread condition does not meet the Type II or Type III condition), and be inspected thereafter at intervals not to exceed 24 months as required by paragraph (h) of this AD; and any applicable actions specified in paragraph (i) of this AD must be accomplished.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using Goodrich Service Bulletin 47145–27–16, dated November 7, 2011; or Revision 1, dated August 1, 2012.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing, and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(o) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided that, if any THSA corrosion is found during any action required by paragraph (h) of this AD, that corrosion is classified as Type I or Type II, as defined in Goodrich Service Bulletin 47145–27–16, dated November 7, 2011; Revision 1, dated August 1, 2012; or Revision 2, dated January 27, 2013.

(p) Related Information

Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0175, dated September 7, 2012, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(q) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(ii) Goodrich Service Bulletin 47145–27–16, dated November 7, 2011.

(iii) Goodrich Service Bulletin 47145–27–16, Revision 1, dated August 1, 2012. Pages 1 through 4 of this document are identified as Revision 1, dated August 1, 2012. Pages 5 through 117 of this document are dated November 7, 2011.

(iv) Goodrich Service Bulletin 47145–27–16, Revision 2, dated January 7, 2013. Pages 1, 2, and 4 of this document are identified as Revision 1, dated August 1, 2012. Page 3 of this document is identified as Revision 2, dated January 7, 2013. Pages 5 through 117 of this document are dated November 7, 2011.

(3) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; telephone +44 (0) 1902 624938; fax +44 (0) 1902 788100; email *techpubs.wolverhampton@goodrich.com*; Internet *http://www.goodrich.com/TechPubs.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 23, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–21071 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0240; Directorate Identifier 2011–SW–060–AD; Amendment 39–17565; AD 2013–17–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Eurocopter France (Eurocopter) Model AS350 and AS355 helicopters. This AD

requires inspecting the tail rotor control stop screws to determine if they are correctly aligned and adjusting the screws if they are misaligned. This AD is prompted by the discovery of a loose nut on the tail rotor control stop and a misaligned tail rotor control stop screw. The actions of this AD are intended to detect a loose nut or a misaligned stop screw, which, if not corrected, could limit yaw authority, and consequently, result in a loss of helicopter control.

DATES: This AD is effective October 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of October 9, 2013.

ADDRESSES: 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Aviation Safety Engineer, Continued Operational Safety, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *matthew.fuller@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On March 14, 2013, at 78 FR 16200, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model AS350B, AS350BA, AS350B1, AS350B2, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, and AS355F2 helicopters with an autopilot installed; Model AS350B3 helicopters with an autopilot or modification 073252 installed; and Model AS355N and AS355NP helicopters with an autopilot or modification 071908 installed. The NPRM proposed to require inspecting the tail rotor control stop screws to determine if they are correctly aligned and adjusting the screws if they are misaligned. The proposed requirements were intended to detect a loose nut or a misaligned stop screw, which, if not corrected, could limit yaw authority, and consequently, result in a loss of helicopter control.

The NPRM was prompted by AD No. 2011–0164, dated August 31, 2011, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD No. 2011–0164 to correct an unsafe condition for Eurocopter Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with either an autopilot or certain modifications installed. EASA advises that during take-off with a sling load, the pilot of a Model AS350B3 helicopter reached one of the yaw stops before its usual position. The inspection that followed revealed that a tail rotor control stop nut was loose and that the corresponding tail rotor control stop screw was ''out of adjustment.'' EASA states that this condition, if not detected and corrected, ''can lead to the loss of adjustment of the affected stop and consequently limit yaw authority, possibly resulting in loss of control of the helicopter.''

Comments

After our NPRM (78 FR 16200, March 14, 2013), was published, we received comments from one commenter.

Request

The commenter suggested that an AD is unnecessary because operators should have already tightened the screw.

We disagree that an AD is not needed. More than one tightening of a screw is necessary to correct this unsafe condition. This AD also requires monitoring the stop screws through repetitive inspections to determine whether a screw has become loose. Without these inspections, if a screw becomes loose and is not corrected, yaw authority could be limited, resulting in loss of helicopter control.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA, reviewed the relevant information, considered the comment received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between this AD and the EASA AD

The EASA AD requires contacting Eurocopter under certain conditions. This does AD not. The EASA AD applies to Eurocopter Model AS350BB helicopters. This AD does not because Model AS350BB does not have an FAA type certificate. However, this AD applies to Eurocopter Model AS350C and AS350D1 helicopters because they have an FAA type certificate and because they have similar tail rotor stop screw assemblies as the other applicable helicopter models. The EASA AD does not apply to the Model AS350C and AS350D1 helicopters.

Interim Action

We consider this AD to be an interim action because Eurocopter is developing a modification to address the unsafe condition identified in this AD. After this modification is developed, approved, and available, we might consider additional rulemaking.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. AS350–05.00.64 for Model AS350B, BA, BB, B1, B2, B3, and D civil helicopters and Model AS350L1 military helicopters, and ASB No. AS355–05.00.59 for Model AS355E, F, F1, F2, N, and NP civil helicopters, both Revision 0 and both dated August 30, 2011. The ASBs specify inspecting the locking of the stop screws and, if warranted, adjusting the stops, marking the screw/nut assembly with a red line of paint, and periodically inspecting the paint line's alignment on the screw/nut assembly.

Costs of Compliance

We estimate that this AD will affect 911 helicopters of U.S. Registry and that labor costs average $85 per work-hour.

Based on these estimates, we expect the following costs:

• Inspecting the locking of the stop screws takes about a 0.4 work-hour for a labor cost of about $34 per helicopter and $30,974 for the U.S. fleet. No parts are needed.

• Adjusting the stop screws, if needed, requires about a 0.2 work-hour for a labor cost of $17. No parts are needed.

• Painting the line requires a 0.1 work-hour for a labor cost of about $9 per helicopter and $8,199 for the U.S. fleet. No parts are needed.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

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

2013–17–01 Eurocopter France Helicopters: Amendment 39–17565; Docket No. FAA–2013–0240; Directorate Identifier 2011–SW–060–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Model AS350B, AS350BA, AS350B1, AS350B2, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, and AS355F2 helicopters with an autopilot installed;

(2) Model AS350B3 helicopters with an autopilot or modification 073252 installed; and

(3) Model AS355N and AS355NP helicopters with an autopilot or modification 071908 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a loose nut or misaligned tail rotor control stop screw (stop screw). This condition could result in limited yaw authority and subsequent loss of helicopter control.

(c) Effective Date

This AD becomes effective October 9, 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

(1) Within 110 hours time-in-service (TIS), inspect the locking of the stop screws to determine whether the stop screws turn.

(i) If any stop screw turns, adjust the stop screw.

(ii) Mark a line of red paint on the screw-nut assembly as depicted in Section B–B, Figure 1 of Eurocopter Alert Service Bulletin (ASB) No. AS350–05.00.64 or ASB No. AS355–05.00.59, as applicable to your model helicopter. Both ASBs are Revision 0 and dated August 30, 2011.

(2) Thereafter, at intervals not to exceed 110 hours TIS, inspect the stop screws to determine whether the paint lines on the screw and the nut are aligned. If the red paint lines are not aligned, remove the paint, adjust the stop screw, and mark a new line of paint on the screw-nut assembly as depicted in Section B–B, Figure 1 of Eurocopter ASB No. AS350–05.00.64 or ASB No. AS355–05.00.59, as applicable to your model helicopter. Both ASBs are Revision 0 and dated August 30, 2011.

(f) Special Flight Permits

A one-time flight permit may be granted, provided that the pilot has full yaw authority before flight.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Aviation Safety Engineer, Continued Operational Safety, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *matthew.fuller@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

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2011–0164, dated August 31, 2011. You may view the EASA AD in the AD Docket on the Internet at *http://www.regulations.gov.*

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6720, tail rotor control system.

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin No. AS350–05.00.64, Revision 0, dated August 30, 2011.

(ii) Eurocopter Alert Service Bulletin No. AS355–05.00.59, Revision 0, dated August 30, 2011.

(3) For Eurocopter 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.*

(4) You may view this service information that is incorporated by reference in the AD Docket on the Internet at *http://www.regulations.gov.*

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

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued in Fort Worth, Texas, on August 12, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–20238 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0239; Directorate Identifier 2010–SW–087–AD; Amendment 39–17552; AD 2013–16–14]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Eurocopter Deutschland GmbH (ECD) EC 135 P1, P2, P2+, T1, T2, and T2+ helicopters equipped with a certain main transmission housing upper part. This AD requires installing a corrugated washer in the middle of the main transmission filter housing upper part and modifying the main transmission housing upper part. This AD was prompted by an inspection of housing upper parts that revealed the bypass inlet in the oil filter area was not manufactured in accordance with applicable design specifications. The actions of this AD are intended to prevent failure of the main transmission and subsequent loss of control of the helicopter.

DATES: This AD is effective October 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of October 9, 2013.

ADDRESSES: 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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:

Discussion

On March 14, 2013, at 78 FR 16196, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to ECD Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters with a certain serial numbered main transmission FS108 housing upper part, part number (P/N) 4649 301 034. The NPRM proposed to require installing a corrugated washer in the filter housing of the housing upper part and modifying each affected main transmission housing upper part by machining the oil filter bypass inlet. The proposed requirements were intended to prevent failure of the main transmission and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2010–0213, dated October 14, 2010, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD No. 2010–0213 to correct an unsafe condition for the ECD model EC 135 and EC635 helicopters. EASA advises that a recent inspection on some housing upper parts for the main transmission FS108 revealed the bypass inlet in the oil filter area had not been manufactured in accordance with the applicable design specifications. EASA advises that this condition, if not detected and corrected, could adversely affect the oil-filter bypass function, which is essential for continued safe flight. The EASA AD requires a temporary modification of the main transmission housing upper part by installing a corrugated washer, and then a ''rework'' of the oil filter area to bring the affected parts within the applicable design specifications.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 16196 March 14, 2013).

FAA's Determination

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

Related Service Information

ECD has issued Alert Service Bulletin (ASB) ASB EC135–63A–017, Revision 0, dated October 11, 2010 (EC135–63A–017), which specifies removing the oil filter element and installing a corrugated washer. EC135–63A–017 also specifies reworking the affected filter housing upper part at the next repair or major overhaul of the main transmission, no later than 4,000 flight hours after receipt of the service bulletin. EASA classified this ASB as mandatory and issued AD 2010–0213 to ensure the continued airworthiness of these helicopters.

We have also reviewed ZF Luftfahrttechnik GmbH Service Instruction No. EC135FS108–1659–1009, dated September 14, 2010, which specifies procedures for repairing the main transmission upper housing, and includes dimensions and tolerances for machining the housing upper part.

Costs of Compliance

We estimate that this AD will affect 227 helicopters of U.S. Registry. Based on an average labor rate of $85 per work hour, we estimate that operators may incur the following costs in order to comply with this AD. Installing the corrugated washer will require about .5 work hour, and required parts cost about $10, for a cost per helicopter of about $53, and a total cost to the U.S.

operator fleet of $12,031. Machining the housing upper part requires about 5 work-hours and required parts cost about $73, for a total cost per helicopter of $498, and a total cost to U.S. operators of $113,046.

According to the ECD ASB, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Eurocopter. 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 helicopters identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–16–14 Eurocopter Deutschland GmbH: Amendment 39–17552; Docket No. FAA–2013–0239; Directorate Identifier 2010–SW–087–AD.

(a) Applicability

This AD applies to Eurocopter Deutschland GmbH Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters with a main transmission FS108 housing upper part, part number (P/N) 4649 301 034 and a serial number listed in Table 1 of Eurocopter Alert Service Bulletin EC135–63A–017, Revision 0, dated October 11, 2010 (ASB EC135–63A–017), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an improperly manufactured bypass inlet in the oil filter area. This condition could adversely affect the oil-filter bypass function, resulting in failure of the main transmission and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective October 9, 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

(1) Within 3 months, remove the oil filter element and install a corrugated washer, P/N 0630100377, in the middle of the filter housing of the housing upper part as depicted in Figure 2 of ASB EC135–63A–017.

(2) Within 4,000 hours time-in-service or at the next main transmission repair or overhaul, whichever occurs first, machine the main transmission housing upper part in accordance with Annex A of ZF Luftfahrttechnik GmbH Service Instruction No. EC135FS108–1659–1009, dated September 14, 2010.

(3) Do not install a main transmission upper part, P/N 4649 301 034, on any helicopter unless it has been modified as required by paragraphs (e)(1) through (e)(2) of this AD.

(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

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2010–0213, dated October 14, 2010. You may view the EASA AD in the AD docket on the Internet at *http://www.regulations.gov.*

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6320: Main Rotor Gearbox.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin EC135–63A–017, Revision 0, dated October 11, 2010.

(ii) ZF Luftfahrttechnik GmbH Service Instruction No. EC135FS108–1659–1009, dated September 14, 2010.

(3) 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.*

(4) You may view this service information that is incorporated by reference in the AD docket on the Internet at *http://www.regulations.gov.*

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

Issued in Fort Worth, Texas, on August 2, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–19500 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0738; Directorate Identifier 2013–CE–022–AD; Amendment 39–17568; AD 2013–17–04]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Rotax Aircraft Engines 912 A Series Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for various aircraft equipped with Rotax Aircraft Engines 912 A Series Engine. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as oil leaks in the intake channel in the area of the valve guide on some cylinder heads could increase the oil consumption and result in engine stoppage. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 24, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 24, 2013.

We must receive comments on this AD by October 21, 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: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact BRP-Powertrain GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; Internet: *http://www.rotax-aircraft-engines.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2013–0117–E, dated May 30, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a production test run, a non-compliance of the installed cylinder head assembly of cylinder no. 2 and 3 (2/3) was detected, which may result in a latent defect on a limited number of engines. The affected cylinder heads may not have been manufactured in accordance with the specification.
>
> This condition, if not detected and corrected, could lead to an oil leak in the intake channel in the area of the valve guide. The affected non-conforming cylinder heads may have small machined through holes, which can increase the oil consumption and can lead to oil starvation, possibly resulting in engine stoppage or in-flight engine shutdown and forced landing, with consequent risk of damage to the aeroplane and injury to occupants.
>
> To address and correct this potential unsafe condition, EASA issued Emergency AD 2013–0055–E to require a one-time inspection of the affected cylinder head assemblies, known to be installed on certain s/n engines and, depending on findings, replacement of the cylinder head assembly.
>
> Since that AD was issued, it was found that more engines are likely to have an affected cylinder head assembly installed than initially determined. In addition, it has been found that some affected cylinder head assemblies, identified by Part Number (P/N) 623682 and P/N 623687, have inadvertently been supplied as spares, between 31 January 2013 and 28 May 2013.
>
> For the reasons described above, this AD retains the requirements of EASA AD 2013–0055–E, which is superseded, but expands the Applicability to all engines, as it cannot be determined in which s/n engines the affected spare cylinder head assemblies are installed.
>
> This AD also prohibits installation of an affected cylinder head assembly on an engine, or a replacement engine on an aeroplane, unless the affected cylinder head assembly of that engine is inspected as required by this AD.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Rotax Aircraft Engines BRP has issued Alert Service Bulletin ASB–912–062R2, Revision 2 and ASB–914–044R2, Revision 2 (co-published as one document), dated May 29, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because an oil leak in the intake channel in the area of the valve guide on some cylinder heads could increase the oil consumption and result in engine stoppage. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and

we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0738; Directorate Identifier 2013–CE–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 50 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $2,125, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 1.5 work-hours and require parts costing $2,500, for a cost of $2,627.50 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–17–04 Various Aircraft: Amendment 39–17568; Docket No. FAA–2013–0738; Directorate Identifier 2013–CE–022–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 24, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all serial numbers of the airplanes listed in table 1 of paragraph (c) of this AD, that are:

(1) equipped with a Rotax Aircraft Engines 912 A series engine with a part number (P/N) 623682 cylinder head assembly (2/3) installed; and

(2) certificated in any category.

TABLE 1 OF PARAGRAPH (C)—AFFECTED AIRPLANES

Type certificate holder	Aircraft model	Engine model
Aeromot-Indústria Mecânico-Metalúrgica Ltda	AMT–200	912 A2
Diamond Aircraft Industries	HK 36 R ''Super Dimona''	912 A
Diamond Aircraft Industries GmbH	HK 36 TS and HK 36 TC	912 A3
Diamond Aircraft Industries Inc	DA20–A1	912 A3
HOAC-Austria	DV 20 Katana	912 A3
Iniziative Industriali Italiane S.p.A	Sky Arrow 650 TC	912 A2
SCHEIBE-Flugzeugbau GmbH	SF 25C	912 A2

(d) Subject

Air Transport Association of America (ATA) Code 72: Engine—Reciprocating.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as oil leaks in the intake channel in the area of the valve guide on some cylinder heads, which could increase the oil consumption and result in engine stoppage. We are issuing this AD to detect and correct excessive oil consumption, which could result in engine stoppage.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within the next 5 hours time-in-service (TIS) after September 24, 2013 (the effective date of this AD) or within the next 20 days after September 24, 2013 (the effective date of this AD), whichever occurs first, inspect the cylinder head assembly of cylinder 2 and 3 (2/3) for excessive oil consumption following Section 3 of Rotax Aircraft Engines BRP Alert Service Bulletin ASB–912–062R2 and ASB–914–044R2 (co-published as one document), Revision 2, dated May 29, 2013.

(2) During the inspection required in paragraph (f)(1) of this AD, if excessive deposits (oil or carbon) are found on the spark plugs, before further flight, replace the affected cylinder head assembly with a serviceable one. Do the replacement following Section 3 of Rotax Aircraft Engines BRP Alert Service Bulletin ASB–912–062R2 and ASB–914–044R2 (co-published as one document), Revision 2, dated May 29, 2013.

(3) As of September 24, 2013 (the effective date of this AD), only install an engine affected by this AD provided it has been inspected as specified in paragraph (f)(1) of this AD and corrected as specified in paragraph (f)(2) of this AD.

(4) As September 24, 2013 (the effective date of this AD), any spare cylinder head assembly P/N 623682 installed must be inspected within 5 hour TIS after installation following Section 3 of Rotax Aircraft Engines BRP Alert Service Bulletin ASB–912–062R2 and ASB–914–044R2 (co-published as one document), Revision 2, dated May 29, 2013, and corrected as necessary.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2013–0117–E, dated May 30, 2013, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov*.

(i) Material Incorporated by Reference

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

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

(i) Rotax Aircraft Engines BRP Alert Service Bulletin ASB–912–062R2, Revision 2, dated May 29, 2013.

(ii) Rotax Aircraft Engines BRP Alert Service Bulletin ASB–914–044R2, Revision 2, dated May 29, 2013.

Note 1 to paragraph (i)(2): Rotax Aircraft Engines BRP Alert Service Bulletins ASB–912–062R2, Revision 2, dated May 29, 2013; and ASB–914–044R2, Revision 2, dated May 29, 2013, are co-published as one document.

(3) For Rotax Aircraft Engines service information identified in this AD, contact BRP-Powertrain GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; Internet: *http://www.rotax-aircraft-engines.com*.

(4) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri on August 14, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–21329 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0364; Directorate Identifier 2011–NM–114–AD; Amendment 39–17562; AD 2013–16–24]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 90–23–14 for certain The Boeing Company Model 747 series airplanes. AD 90–23–14 required inspections of the fuselage skin lap splice between body station (BS) 340 and BS 400 at stringers (S)–6L and S–6R, and repair if necessary. This new AD adds new repetitive inspections for cracking in the S–6 skin lap splice, which terminates the inspections required by AD 90–23–14; eventual modification of the lap splice, which terminates the repetitive inspections; post-modification inspections; and corrective actions if necessary. This AD also adds airplanes to the applicability. This AD was prompted by a report of cracks up to 18.5 inches that were found at S–6L and S–6R on several airplanes, and subsequent analysis results that indicated that the protruding head fastener modification and related post-modification inspections required by AD 90–23–14 are not adequate to prevent cracking at the upper row of fasteners in the S–6 lap joint before the cracks reach a critical length. We are issuing this AD to detect and correct cracking at the upper row of fasteners in the S–6 lap joint, which could result in a sudden loss of cabin pressurization and the inability of the fuselage to withstand failsafe loads.

DATES: This AD is effective October 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 9, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6,

1990), (''AD 90–23–14''). AD 90–23–14 applied to the specified products. The NPRM published in the **Federal Register** on May 3, 2013 (78 FR 25898). The NPRM proposed to continue to require inspections of the fuselage skin lap splice between BS 340 and BS 400 at S–6L and S–6R, and repair if necessary. The NPRM also proposed to add new repetitive inspections for cracking in the stringer 6 skin lap splice, which would terminate the inspections required by AD 90–23–14; eventual modification of the lap splice, which would terminate the new repetitive inspections; post-modification inspections; and corrective actions if necessary. The NPRM also proposed to add airplanes to the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 25898, May 3, 2013) or on the determination of the cost to the public.

Clarification

We have revised the wording of paragraphs (i) and (j) of this AD to clarify that certain compliance time adjustment factors were allowed in AD 90–23–14 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), but are no longer allowed in this new AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 25898, May 3, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 25898, May 3, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 76 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspections from AD 90–23–14 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990).	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle.	$51,680 per inspection cycle.
New pre-modification inspections	8 work-hours × $85 per hour = $680 per inspection cycle.	0	680 per inspection cycle.	$51,680 per inspection cycle.
New modification	204 work-hours × $85 per hour = $17,340.	0	17,340	$1,317,840.
New post-modification inspections	12 work-hours × $85 per hour = $1,020 per inspection cycle.	0	1,020 per inspection cycle.	$77,520.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

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

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), and adding the following new AD:

2013–16–24 The Boeing Company: Amendment 39–17562; Docket No. FAA–2013–0364; Directorate Identifier 2011–NM–114–AD.

(a) Effective Date

This AD is effective October 9, 2013.

(b) Affected ADs

This AD supersedes AD 90–23–14, Amendment 39–6801 (55 FR 46652, November 6, 1990).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks up to 18.5 inches that were found at stringer (S)-6L and S–6R on several airplanes, and subsequent analysis results that indicated that the protruding head fastener modification and related post-modification inspections required by AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990) are not adequate to prevent cracking at the upper row of fasteners in the S–6 lap joint before the cracks reach a critical length. We are issuing this AD to detect and correct cracking at the upper row of fasteners in the S–6 lap joint, which could result in a sudden loss of cabin pressurization and the inability of the fuselage to withstand failsafe loads.

(f) Compliance

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

(g) Retained Inspection for Unmodified Airplanes With Revised Service Information

This paragraph restates the requirements of paragraph (A) of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), with revised service information. For airplanes identified in Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990, and that have not been modified as specified in Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990; in accordance with the schedule indicated in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, perform a high frequency eddy current (HFEC) inspection of the fuselage lap joint for cracks between body station (BS) 340 and BS 400, or aft as far as the crew door, at stringer S–6L and S–6R, in accordance with Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990; or Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. As of the effective date of this AD, only Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, may be used to accomplish the actions required by this paragraph.

(1) The inspection schedule is specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Unless previously accomplished within the last 2,750 landings, perform the initial inspection within the next 250 landings after December 11, 1990 (the effective date of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990)), or prior to the accumulation of 10,000 landings after the modification, whichever occurs later.

(ii) Repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(2) If cracks are found, repair prior to further flight, in accordance with Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990; or Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. As of the effective date of this AD, only Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, may be used to accomplish the actions required by this paragraph.

(h) Retained Inspection for Modified Airplanes With Revised Service Information

This paragraph restates the requirements of paragraph (B) of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), with revised service information. For airplanes identified in Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990, and that have been modified as specified in Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990: In accordance with the schedule specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, perform an HFEC inspection of the fuselage lap joint for cracks between BS 340 and BS 400, or aft as far as the crew door, at S–6L and S–6R, in accordance with Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990, or Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. As of the effective date of this AD, use only Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, to accomplish the action required by this paragraph. Accomplishment of the actions required by paragraph (k) of this AD terminates the requirements of this paragraph.

(1) The inspection schedule is specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Unless previously accomplished within the last 2,750 landings, perform the initial inspection within the next 250 landings after December 11, 1990 (the effective date of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990)), or prior to the accumulation of 10,000 landings after the modification, whichever occurs later.

(ii) Repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(2) If cracks are found, repair prior to further flight, in accordance with Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990; or Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. As of the effective date of this AD, only Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, may be used to accomplish the actions required by this paragraph.

(i) Retained Landing Determination

This paragraph restates the provisions of paragraph (C) of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), with a compliance time limitation. On or before the effective date of this AD: For purposes of complying with paragraphs (g) and (h) of this AD, the number of landings may be determined to be equal to the number of pressurization cycles where the cabin pressure differential was greater than 1.5 pounds per square inch (psi). After the effective date of this AD, every landing must be used for compliance with paragraphs (g) and (h) of this AD, regardless of cabin pressure differential cycles.

(j) Retained Inspection Adjustment Factor

This paragraph restates the requirements of paragraph (D) of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), with a compliance time limitation. For Model 747SR airplanes only: On or before the effective date of this AD, based on a continued mixed operation of lower cabin differentials, the initial inspection thresholds and the repetitive inspection intervals specified in paragraphs (g) and (h) of this AD may be multiplied by a 1.2 adjustment factor. After the effective date of this AD, the 1.2 adjustment factor is not allowed.

(k) New Inspections: Groups 1 Through 5 Airplanes

For airplanes in Groups 1 through 5, as identified in Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010: At the time specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010—except that where Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, refers to a compliance time of 250 flight cycles after December 11, 1990 (the effective date of AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990)), the compliance time is 250 flight cycles after the effective date of this AD—do external detailed and HFEC inspections for cracks in the stringer 6 skin lap splice, and do all applicable corrective actions, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, except as required by paragraph (o) of this AD. Do all applicable corrective actions at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. Accomplishment of the actions required by this paragraph terminates the requirements of paragraphs (g) and (h) of this AD.

(l) New Repetitive Pre-Modification Inspections: Groups 1 Through 5 Airplanes

For airplanes in Groups 1 through 5, as identified in Boeing Special Attention Service Bulletin 747–53–2253, Revision 4,

dated September 9, 2010: Repeat the inspections required by paragraph (k) of this AD at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, until accomplishment of the modification required by paragraph (m) of this AD.

(m) New Modification: Groups 1 Through 5 Airplanes

(1) For airplanes in Groups 1 through 5, as identified in Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, on which the structural repair manual (SRM) repair specified in Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, has not been done: Before the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, install the doubler modification, and do all applicable related investigative and corrective actions, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. All applicable related investigative and corrective actions must be done before further flight. Compliance with the requirements of this paragraph terminates the requirements of paragraphs (k) and (l) of this AD.

(2) For airplanes in Groups 1 through 5, as identified in Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, on which the SRM repair specified in Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, has been done: Within 3,000 flight cycles after accomplishing the SRM repair or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, install the doubler modification, and do all applicable related investigative and corrective actions, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. All applicable related investigative and corrective actions must be done before further flight. Compliance with the requirements of this paragraph terminates the requirements of paragraphs (k) and (l) of this AD.

(n) New Repetitive Post-Modification Inspections: Modified Airplanes

For airplanes modified as specified in Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, at the applicable time specified in Table 3 or 4 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010: Do detailed and eddy current inspections to detect cracking of the skin, frames, and tear straps, as applicable, in accordance with Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010. If any crack is found, repair before further flight using a method approved in accordance with the procedures specified in paragraph (q) of this AD. Repeat the applicable inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010.

(o) Exceptions to Service Information Specifications

(1) If any cracking is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(2) Although Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(3) As of the effective date of this AD, if any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(p) Credit for Previous Actions

This paragraph provides credit for the repairs and doubler modifications required by paragraphs (k) and (m) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (p)(1) through (p)(4) of this AD. Post-modification inspections must continue, as required by paragraph (n) of this AD.

(1) Boeing Service Bulletin 747–53–2253, dated December 14, 1984, which is not incorporated by reference in this AD.

(2) Boeing Service Bulletin 747–53–2253, Revision 1, dated January 25, 1990, which is not incorporated by reference in this AD.

(3) Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990.

(4) Boeing Service Bulletin 747–53–2253, Revision 3, dated March 24, 1994, which is not incorporated by reference in this AD.

(q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 90–23–14, Amendment 39–6801 (Docket No. 90–NM–110–AD; 55 FR 46652, November 6, 1990), are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously for the ADs specified in paragraphs (q)(5)(i) through (q)(5)(vi) of this AD, for repair and doubler modification installations in the area affected by Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010, are approved as AMOCs for the actions specified in paragraphs (g), (h), (k), (l), and (m) of this AD. The post-modification inspections required by paragraph (n) of this AD must be accomplished.

(i) AD 2010–10–05, Amendment 39–16284 (75 FR 27424, May 17, 2010).

(ii) AD 2010–09–03, Amendment 39–16268 (75 FR 22514, April 29, 2010).

(iii) AD 2009–04–16, Amendment 39–15822 (74 FR 8737, February 26, 2009).

(iv) AD 91–11–01, Amendment 39–6997 (56 FR 22306, May 15, 1991).

(v) AD 90–06–06, Amendment 39–6490 (55 FR 8374, March 7, 1990).

(vi) AD 2006–24–02, Amendment 39–14831 (71 FR 67445, November 22, 2006).

(r) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

(2) Service information that is referenced in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (s)(4) and (s)(5) of this AD.

(s) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 9, 2013.

(i) Boeing Service Bulletin 747–53–2253, including Addendum, Revision 2, dated March 29, 1990.

(ii) Boeing Special Attention Service Bulletin 747–53–2253, Revision 4, dated September 9, 2010.

(4) For Boeing service information identified in this AD, contact Boeing

Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(5) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 2, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–21397 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9634]

RIN 1545–BK41

Determining the Amount of Taxes Paid for Purposes of the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. These regulations address certain highly structured arrangements that produce inappropriate foreign tax credit results. The regulations affect individuals and corporations that claim direct and indirect foreign tax credits.

DATES: *Effective date:* These regulations are effective on September 4, 2013.

Applicability date: For dates of applicability, see § 1.901–2(h)(3).

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, at (202) 622–3850.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On July 18, 2011, a notice of proposed rulemaking (REG–126519–11) under section 901 of the Internal Revenue Code (Code) relating to the determination of the amount of taxes paid for purposes of the foreign tax credit was published in the **Federal Register** (76 FR 42076). In the same issue of the **Federal Register**, final and temporary regulations were also issued. The text of those temporary regulations served as the text of the proposed regulations. No comments were received in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations with no substantive change, and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have foreign operations, which tend to be larger businesses. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey P. Cowan, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.901–2 is amended by:

■ 1. Adding a sentence at the end of paragraph (e)(5)(iv)(B)(*1*)(*ii*).

■ 2. Removing paragraph (e)(5)(iv)(B)(*1*)(*iii*).

■ 3. Revising the first sentence of paragraph (h)(2).

■ 4. Revising paragraph (h)(3).

The revisions and addition read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(5) * * *

(iv) * * *

(B) * * *

(*1*) * * *

(*ii*) * * * A foreign payment attributable to income of the entity also includes a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a dividend or other distribution (including distributions made by a pass-through entity or an entity that is disregarded as an entity separate from its owner for U.S. tax purposes) with respect to the equity of the entity.

* * * * *

(h) * * *

(2) Except as provided in paragraph (h)(3) of this section, paragraph (e)(5)(iv) of this section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under § 1.901–2(f) on or after July 13, 2011. * * *

(3) The last sentence of paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under § 1.901–2(f) on or after September 4, 2013. See 26 CFR 1.901–2T(e)(5)(iv)(B)(*1*)(*iii*) (revised as of April 1, 2013) for rules applicable to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under § 1.901–2(f) before September 4, 2013.

* * * * *

§ 1.901–2T [Removed]

■ **Par. 3.** Section 1.901–2T is removed.

Beth Tucker,

Deputy Commissioner for Operations Support.

Approved: August 6, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–21401 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0767]

RIN 1625–AA87

Security Zone, Baltimore Harbor, Baltimore's Inner Harbor; Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of Baltimore Harbor, Baltimore's Inner Harbor, at Baltimore, Maryland. This action is necessary to safeguard persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless granted permission from the Coast Guard Captain of the Port Baltimore or his designated representative.

DATES: This rule is effective on September 5, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0767]. 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 Mr. Ronald L. Houck, at Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@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 impractical and contrary to public interest to delay the effective date of this rule. The Coast Guard was unable to publish a NPRM and hold a comment period for this rulemaking due to the short time period between event planners notifying the Coast Guard of details concerning the event, on August 9, 2013, and publication of this security zone. As such, it is impracticable to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this security zone would be contrary to the public interest given the high risk of injury and damage during a large public gathering.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment, therefore, a 30-day notice period is impractical. Delaying the effective date would be contrary to the security zone's intended objectives of protecting a large gathering of the public, as it would introduce vulnerability to the maritime safety and security of the general public.

B. Basis and Purpose

The National Football League, of New York, NY, will sponsor the ''NFL Kickoff Event'', a highly-publicized celebration located at Baltimore, MD, scheduled on September 5, 2013. The activity begins at 7:30 p.m. with venue access granted at 6 p.m. During this event, a large gathering of the public is expected to take place along the promenade in Baltimore's Inner Harbor. Activities associated with this event include a nationally-televised live music concert and fireworks display launched from barges, located in navigable waterways within the Captain of the Port's Area of Responsibility.

The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce. The Captain of the Port Baltimore is establishing this security zone to protect a large gathering of the general public, mitigate potential terrorist acts, and enhance public and maritime safety and security in order to safeguard life, property, and the environment on or near the navigable waters.

C. Discussion of the Final Rule

Through this regulation, the Coast Guard will establish a security zone. The security zone will be in effect from 5 p.m. until 11:59 p.m. on September 5, 2013. The security zone will include all navigable waters of Baltimore Harbor, Baltimore's Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn from position latitude 39° 17′03.41″ N, longitude 076°36′28.35″ W southerly to position latitude 39°16′58.24″ N, longitude 076°36′27.59″ W, located along the waterfront at Baltimore, MD (datum NAD 1983). This location is entirely within the Area of Responsibility of the Captain of the Port Baltimore, as set forth at 33 CFR 3.25–15.

This rule requires any unauthorized persons in the regulated area at the time this security zone is in effect to immediately proceed out of the zone. Except for vessels at berth, mooring, or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to immediately depart the security zone. Entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port Baltimore. U.S. Coast Guard personnel will be provided to prevent the movement of unauthorized persons into the zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule. The Coast Guard will issue Notices to Mariners to further publicize the security zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

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. Although this security zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration of the regulated area. In addition, notifications will be made to the maritime community so mariners may adjust their plans accordingly.

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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, transit through or anchor within the security zone during the enforcement period. The security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone is of limited size and duration. Although the security zone would apply to the entire width of the harbor, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Before the effective period, maritime advisories will be widely available to the maritime community.

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 involves establishing a temporary security zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the

discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0767 to read as follows:

§ 165.T05–0767 Security Zone, Baltimore Harbor, Baltimore's Inner Harbor; Baltimore, MD.

(a) *Location.* The following area is a security zone: all waters of Baltimore Harbor, Baltimore's Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn from position latitude 39°17′03.41″ N, longitude 076°36′28.35″ W southerly to position latitude 39°16′58.24″ N, longitude 076°36′27.59″ W, located along the waterfront at Baltimore, MD. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary § 165.T05.0767.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(d) *Effective period.* This rule is effective from 5 p.m. until 11:59 p.m. on September 5, 2013.

(e) *Enforcement period.* This section will be enforced from 5 p.m. until 11:59 p.m. on September 5, 2013.

Dated: August 15, 2013.

M.M. Dean,

Commander, U. S. Coast Guard, Acting Captain of the Port Baltimore.

[FR Doc. 2013–21394 Filed 9–3–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0449; FRL–9900–58–Region9]

Determination of Attainment for the West Central Pinal Nonattainment Area for the 2006 Fine Particle Standard; Arizona; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the West Central Pinal nonattainment area in Arizona has attained the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2010–2012 monitoring period. Based on the above determination, the requirements for this area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are suspended for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This rule is effective on October 4, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0449 for this action. 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. 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, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). 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: Ginger Vagenas, (415) 972–3964, or by email at *vagenas.ginger@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

Table of Contents

I. Summary of Proposed Action
II. Public Comments and EPA Responses
III. EPA's Final Action
IV. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On July 12, 2013 (78 FR 41901), EPA proposed to determine that the West Central Pinal nonattainment area [1] has attained the 2006 24-hour NAAQS [2] for

[1] Covering approximately 460 square miles, the West Central Pinal $PM_{2.5}$ nonattainment area is located within Pinal County, Arizona.

[2] The 2006 24-hour $PM_{2.5}$ NAAQS is 35 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of the 98th percentile of 24-hour concentrations.

fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, $PM_{2.5}$).

In our proposed rule, we explained that in making an attainment determination, EPA relies on complete, quality-assured, and certified data gathered at a State and Local Air Monitoring Station(s) (SLAMS) and entered into EPA's Air Quality System (AQS) database. Under 40 CFR 50.13 (''National primary and secondary ambient air quality standards for $PM_{2.5}$'') and appendix N to 40 CFR part 50 (''Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$''), the 2006 $PM_{2.5}$ NAAQS is met when each monitoring site in the area has a design value at or below the standard.

EPA proposed the determination of attainment for the West Central Pinal area based upon a review of the monitoring network operated by the Pinal County Air Quality Control Department (PCAQCD) and the data collected at the monitoring site operating during the most recent complete three-year period (i.e., 2010 to 2012). Based on this review, EPA found that complete, quality-assured and certified data for the West Central Pinal area showed that the 24-hour design value for the 2009–2011 period was equal to or less than 35 μ/m^3 at the monitoring site. See the data summary table on page 41904 of the July 12, 2013 proposed rule. We also noted that preliminary data available in AQS for 2013 indicates that the West Central Pinal area continues to attain the NAAQS.

In conjunction with and based upon our proposed determination that West Central Pinal has attained and is currently attaining the standard, EPA also proposed to determine that the obligation under the Clean Air Act (CAA) to submit the following attainment-related planning requirements is not applicable for so long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1, section 172. In doing so, we proposed to apply EPA's Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS to suspend the attainment-related SIP submittal obligations under subparts 1 and 4 of part D (of title I of the CAA), if the West Central Pinal nonattainment area were considered a moderate nonattainment area under subpart 4. See pages 41904–41906 of our July 12, 2013 proposed rule. In proposing to apply the Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS, we explained that we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and in individual rulemakings for the 1-hour ozone, coarse particle (PM_{10}) and lead NAAQS.

Please see the July 12, 2013 proposed rule for more detailed information concerning the $PM_{2.5}$ NAAQS, designations of $PM_{2.5}$ nonattainment areas, the regulatory basis for determining attainment of the NAAQS, PCAQCD's $PM_{2.5}$ monitoring network, EPA's review and evaluation of the data, and the rationale and implications for application of the Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS.

II. Public Comments and EPA Responses

EPA's proposed rule provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA's Final Action

For the reasons provided in the proposed rule and summarized herein, EPA is taking final action to determine that the West Central Pinal nonattainment area in Pinal County, Arizona has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on the most recent three years of complete, quality-assured, and certified data in AQS for 2010–2012. Preliminary 2013 data available in AQS show that this area continues to attain the standard.

EPA is also taking final action, based on the above determination of attainment, to suspend the requirements for the West Central Pinal nonattainment area to submit an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1, section 172 for so long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS. EPA's final action is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR 51.918) and the 1997 fine particulate matter standards (*see* 40 CFR 51.1004(c)).

Today's final action does not constitute a redesignation of the West Central Pinal nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the West Central Pinal nonattainment area as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remain nonattainment for this area until such time as EPA determines that Arizona has met the CAA requirements for redesignating the West Central Pinal nonattainment area to attainment.

If the West Central Pinal nonattainment area continues to monitor attainment of the 2006 $PM_{2.5}$ NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 $PM_{2.5}$ NAAQS will remain suspended. If after today's action EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2006 $PM_{2.5}$ NAAQS, the basis for the suspension of the attainment planning requirements for the area would no longer exist, and the area would thereafter have to address such requirements.

IV. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and suspends certain federal requirements, and thus, this action would not impose additional requirements beyond those imposed by state law. For this reason, the final 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 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 final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action 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 November 4, 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, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 22, 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—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 D—Arizona

■ 2. Section 52.131 is amended by adding paragraph (b) to read as follows:

§ 52.131 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(b) *Determination of Attainment:* Effective October 4, 2013, EPA has determined that, based on 2010 to 2012 ambient air quality data, the West Central Pinal $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 $PM_{2.5}$ NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

[FR Doc. 2013–21366 Filed 9–3–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket No. EPA–R02–OAR–2012–0889; FRL–9900–33–Region 2]

Approval and Promulgation of Air Quality Implementation Plans; State of New Jersey; Redesignation of Areas for Air Quality Planning Purposes and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 26, 2012 the New Jersey Department of Environmental Protection (NJDEP) submitted a request for the Environmental Protection Agency (EPA) to approve the redesignation of the New Jersey portion of the New York-N.New Jersey-Long Island, NY-NJ-CT nonattainment area, and the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area, from nonattainment to attainment for the 1997 annual and the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). In conjunction with its redesignation request, New Jersey submitted a State Implementation Plan (SIP) revision containing a maintenance plan for the areas that provides for continued maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The submittals included the 2007 ammonia (NH_3), volatile organic compounds (VOC), nitrogen oxides (NO_X), direct $PM_{2.5}$ and sulfur dioxide (SO_2) emissions inventories submitted to meet the comprehensive emissions inventory requirements of section 172(c)(3) of the Clean Air Act (CAA), and accompanying motor vehicle emissions budgets. EPA is taking final action to approve the requested SIP revisions and to redesignate the New Jersey portions of the New York-N.New Jersey-Long Island, NY-NJ-CT nonattainment area, and the Philadelphia-Wilmington, PA-NJ-DE nonattainment area, to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: This rule is effective on September 4, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2012–0889. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Programs Branch, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin (*fradkin.kenneth@epa.gov*), Air Programs Branch, 290

Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose
II. What comments did EPA receive on its proposal?
III. What is EPA's final action?
IV. Correction of Administrative Errors
V. Statutory and Executive Order Reviews

I. Background and Purpose

On December 26, 2012, the State of New Jersey, through NJDEP, submitted a request to redesignate the New Jersey portion of the New York-N.New Jersey-Long Island, NY-NJ-CT nonattainment area (''NY-NJ-CT nonattainment area''), and the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area (''PA-NJ-DE nonattainment area'') from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. Concurrently, NJDEP submitted a maintenance plan for the areas as a SIP revision to ensure continued attainment. In a supplemental submission to EPA on May 3, 2013, the State of New Jersey submitted NH_3 and VOC emissions inventories to supplement the emissions inventories that had been submitted on December 26, 2012.

Specific details regarding EPA's analysis of New Jersey's SIP can be found in the proposed rulemaking published in the **Federal Register** (FR) on June 27, 2013 (78 FR 38648).

II. What comments did EPA receive on its proposal?

EPA received two comments in support of the proposal. No adverse comments were submitted.

III. What is EPA's final action?

EPA has evaluated New Jersey's redesignation request and determined that it meets the redesignation criteria set forth in the CAA, and is consistent with Agency regulations and policy. Therefore, EPA is taking several actions. EPA is approving New Jersey's request for the redesignation of the New Jersey portions of the NY-NJ-CT and PA-NJ-DE nonattainment areas from nonattainment to attainment for the 1997 $PM_{2.5}$ annual and the 2006 $PM_{2.5}$ 24-hour NAAQS. We are approving New Jersey's maintenance plan for the New Jersey portions of the NY-NJ-CT and PA-NJ-DE nonattainment areas because it meets the requirements set forth in section 175A of the CAA. EPA is approving the 2007 NH_3, VOC, NO_X, direct $PM_{2.5}$ and SO_2 emissions inventories as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. Additionally, EPA is approving the 2009 and 2025 motor vehicle emissions budgets for $PM_{2.5}$ and NO_X.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which 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.'' The purpose of the 30-day waiting period prescribed in section 553(d) 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 rule relieves New Jersey of the obligation to comply with nonattainment-related planning requirements for this $PM_{2.5}$ Area pursuant to Part D of the CAA. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this rulemaking.

IV. Correction of Administrative Errors

At 78 FR 885, January 7, 2013, § 52.1602 was amended by adding new paragraph (e) *Determination of Attainment.* However, the amendment could not be incorporated into the Code of Federal Regulations (CFR) because paragraph (e) already existed. The amendment will be incorporated as paragraph (f) in the regulatory text as part of this final rule.

V. 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.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: August 13, 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—[AMENDED]

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

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

Subpart FF—New Jersey

■ 2. Section 52.1602 is amended by adding new paragraphs (f), (g) and (h) to read as follows:

§ 52.1602 Control strategy and regulations: $PM_{2.5}$.

* * * * *

(f) Determination of Attainment. EPA has determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate ($PM_{2.5}$) nonattainment area has attained the 2006 24-hour $PM_{2.5}$ national ambient air quality standard (NAAQS). This determination suspends the requirements for the Philadelphia-Wilmington, PA-NJ-DE $PM_{2.5}$ nonattainment area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS.

(g) Approval—The maintenance plan submitted on December 26, 2012, and supplemented on May 3, 2013, for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard and the 2006 $PM_{2.5}$ National Ambient Air Quality Standard for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area and the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area has been approved.

(1) The maintenance plan establishes 2009 motor vehicle emission budgets for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area. The budgets were allocated by metropolitan planning organization as follows: North Jersey Transportation Planning Authority: 67,272 tons per year for NO_X and 2,736 tons per year for $PM_{2.5}$; Delaware Valley Regional Planning Commission (Mercer County): 5,835 tons per year for NO_X and 224 tons per year for $PM_{2.5}$.

(2) The maintenance plan establishes 2025 motor vehicle emission budgets for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area. The budgets were allocated by metropolitan planning organization as follows: North Jersey Transportation Planning Authority: 25,437 tons per year for NO_X and 1,509 tons per year for $PM_{2.5}$; Delaware Valley Regional Planning Commission (Mercer County): 2,551 tons per year for NO_X and 119 tons per year for $PM_{2.5}$.

(3) The maintenance plan establishes 2009 motor vehicle emission budgets for the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area. The budgets were allocated by metropolitan planning organization as follows: Delaware Valley Regional Planning Commission (Burlington, Camden, and Gloucester Counties): 18,254 tons per year for NO_X and 680 tons per year for $PM_{2.5}$.

(4) The maintenance plan establishes 2025 motor vehicle emission budgets for the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area. The budgets were allocated by metropolitan planning organization as follows: Delaware Valley Regional Planning Commission (Burlington, Camden, and Gloucester Counties): 8,003 tons per year for NO_X and 363 tons per year for $PM_{2.5}$.

(h) Approval—The 2007 attainment year emissions inventory for the New Jersey portions of the New York-Northern New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area and the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area consisting of NO_X, VOC, NH_3, directly emitted $PM_{2.5}$, and SO_2 emissions. This inventory satisfies the comprehensive emission inventory requirements of section 172(c)(3).

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.331:

■ a. The table entitled ''New Jersey—$PM_{2.5}$ (Annual NAAQS)'' is amended by revising the entries under ''New York-N. New Jersey-Long Island, NY-NJ-CT'' for ''Bergen County'', ''Essex County'', ''Hudson County'', ''Mercer County'', ''Middlesex County'', ''Monmouth County'', ''Morris County'', ''Passaic County'', ''Somerset County'', and ''Union County'', and under ''Philadelphia-Wilmington, PA-NJ-DE'' for ''Burlington County'', ''Camden County'', and ''Gloucester County''.

■ b. The table entitled ''New Jersey—$PM_{2.5}$ [24-hour NAAQS]'' is amended by revising the entries under ''New York-N. New Jersey-Long Island, NY-NJ-CT'' for ''Bergen County'', ''Essex County'', ''Hudson County'', ''Mercer County'', ''Middlesex County'', ''Monmouth County'', ''Morris County'', ''Passaic County'', ''Somerset County'', and ''Union County'', and under ''Philadelphia-Wilmington, PA-NJ-DE'' for ''Burlington County'', ''Camden County'', and ''Gloucester County''.

The revisions read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
New York-N. New Jersey-Long Island, NY-NJ-CT:		
Bergen County	9–4–13	Attainment.
Essex County	9–4–13	Attainment.
Hudson County	9–4–13	Attainment.
Mercer County	9–4–13	Attainment.
Middlesex County	9–4–13	Attainment.
Monmouth County	9–4–13	Attainment.

NEW JERSEY $PM_{2.5}$—Continued

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
Morris County	9–4–13	Attainment.
Passaic County	9–4–13	Attainment.
Somerset County	9–4–13	Attainment.
Union County	9–4–13	Attainment.
Philadelphia-Wilmington, PA-NJ-DE:		
Burlington County	9–4–13	Attainment.
Camden County	9–4–13	Attainment.
Gloucester County	9–4–13	Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

NEW JERSEY $PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
* * * * * * *				
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Bergen County		Unclassifiable/Attainment	9–4–13	Attainment.
Essex County		Unclassifiable/Attainment	9–4–13	Attainment.
Hudson County		Unclassifiable/Attainment	9–4–13	Attainment.
Mercer County		Unclassifiable/Attainment	9–4–13	Attainment.
Middlesex County		Unclassifiable/Attainment	9–4–13	Attainment.
Monmouth County		Unclassifiable/Attainment	9–4–13	Attainment.
Morris County		Unclassifiable/Attainment	9–4–13	Attainment.
Passaic County		Unclassifiable/Attainment	9–4–13	Attainment.
Somerset County		Unclassifiable/Attainment	9–4–13	Attainment.
Union County		Unclassifiable/Attainment	9–4–13	Attainment.
Philadelphia-Wilmington, PA-NJ-DE:				
Burlington County		Unclassifiable/Attainment	9–4–13	Attainment.
Camden County		Unclassifiable/Attainment	9–4–13	Attainment.
Gloucester County		Unclassifiable/Attainment	9–4–13	Attainment.
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

* * * * *

[FR Doc. 2013–21016 Filed 9–3–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130104009–3416–02]

RIN 0648–XC815

Fisheries of the Northeastern United States; Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2013 commercial bluefish quota to the Commonwealth of Massachusetts. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective August 29, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e). The Regional

Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 200,000 lb (90,718 kg) of its 2013 commercial quota to Massachusetts. This transfer was prompted by the diligent efforts of state officials in Massachusetts not to exceed the commercial bluefish quota. The Regional Administrator has determined that the criteria set forth in § 648.162(e)(1) have been met. The revised bluefish quotas for calendar year 2013 are: North Carolina, 2,709,829 lb (1,229,158 kg); and Massachusetts, 809,606 lb (367,231 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2013.

James P. Burgess,

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

[FR Doc. 2013–21466 Filed 8–29–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 171
Wednesday, September 4, 2013

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 336 and 390

RIN 3064–AD98

Removal of Transferred OTS Regulations Regarding Post-Employment Activities of Senior Examiners

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking, the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart A, entitled Restrictions on Post-Employment Activities of Senior Examiners. This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Upon removal of 12 CFR part 390, subpart A, the restrictions for post-employment activities of senior examiners of all insured depository institutions for which the FDIC has been designated the appropriate federal banking agency will be found at 12 CFR part 336, subpart C, entitled One-Year Restriction on Post-employment Activities of Senior Examiners. The proposed rule would not change 12 CFR part 336, subpart C.

This notice of proposed rulemaking also proposes to revise the definition section of 12 CFR part 336, subpart B.

DATES: Comments must be received on or before November 4, 2013.

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

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the agency Web site.
- *FDIC Email: Comments@fdic.gov.* Include RIN # 3064–AD84 on the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary consisting of no more than five single-spaced pages. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 1–877–275–3342 or 1–703–562–2200.

FOR FURTHER INFORMATION CONTACT: Robert J. Fagan, Ethics Program Manager, Legal Division (703) 562–2704 or *rfagan@fdic.gov;* Michelle Borzillo, Senior Counsel, Legal Division (703) 562–6083 or *mborzillo@fdic.gov;* or Randy Thomas, Counsel, Legal Division (703) 562–6454 or *ranthomas@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act,[1] signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the ''transfer date'' established by section 311 of the Dodd-Frank Act (12 U.S.C. 5411), the powers, duties, and functions formerly performed by the OTS were divided among the FDIC; as to State savings associations, the Office of the Comptroller of the Currency (OCC); as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act (12 U.S.C. 5414(b)) provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such advisory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act (12 U.S.C. 5414(c)) further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act (12 U.S.C. 5412(b)(2)(B)(i)(II)) granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and designated the FDIC as the ''appropriate Federal banking agency'' for State savings associations. As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar authority) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations.

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 12 U.S.C. 5301 *et seq.*

[2] 76 FR 39247 (July 6, 2011).

As noted above, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[3] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into FDIC rules that existed before the transfer, or amending them, or rescinding them, as appropriate.

One of the regulations transferred to the FDIC covers OTS restrictions on the post-employment activities of its senior examiners. The OTS's regulation, formerly found at 12 CFR part 507, was transferred to the FDIC with only nominal changes and is now found in the FDIC's rules at 12 CFR part 390, subpart A. Before the transfer, the FDIC's rules included 12 CFR part 336, subpart C, a rule governing restrictions on the post-employment activities of its senior examiners. After careful review and comparison of 12 CFR part 390, subpart A—*Restrictions on Post-Employment Activities of Senior Examiners* and 12 CFR part 336, subpart C—O*ne-Year Restriction on Post-employment Activities of Senior Examiners,* the FDIC proposes to rescind 12 CFR, part 390, subpart A, because this subpart largely duplicates 12 CFR part 336, subpart C.

The rules found at 12 CFR, part 336, subpart C and 12 CFR part 507 were issued in 2005, as part of a joint interagency rulemaking among the FDIC, the FRB, the OCC, and the OTS. The agencies issued substantively similar rules that implemented section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004.[4] This Act added a new section 10(k) to the FDI Act (12 U.S.C. 1820(k)), which imposed post-employment restrictions on senior examiners of depository institutions and their holding companies. By its terms, the Act required the Federal banking agencies to consult with each other to ensure that the rules and regulations that they issued were, to the extent possible, consistent and comparable, taking into account any differences in their respective supervisory programs. 12 U.S.C. 1820(k)(4)(B).

As a result of that joint rulemaking, the four then-existing federal banking agencies adopted very similar, though not identical, rules that outlined the post-employment restrictions on their senior examiners. For example, the waiver provision for the transferred OTS rules, currently found at 12 CFR 390.4, permits the FDIC's Chairperson, or his designee, on a case-by-case basis, to waive post-employment restrictions. Similarly, the analogous FDIC rule, 12 CFR 303.12, permits the FDIC's Board of Directors to waive the applicability of any regulation, including those governing post-employment restrictions for FDIC's senior examiners, upon a showing of good cause.

After comparing the FDIC's rules with the transferred OTS rule relating to post-employment restrictions for senior examiners, the FDIC has concluded that part 336, subpart C more fully and appropriately implements section 10(k) of the FDIA for the purposes of the FDIC, because it focuses on service as a senior examiner of all insured depository institutions, while the transferred OTS rules found at part 390, subpart A, apply only to senior examiners of savings associations and their holding companies.

Therefore, based on the above, the FDIC proposes to rescind and remove from the Code of Federal Regulations the former OTS rules located at 12 CFR part 390, subpart A. If the proposed rule is adopted, all of the FDIC's senior examiners (including those former OTS examiners who were transferred to the FDIC when the OTS was abolished), regardless of whether they evaluate insured state banks or insured State savings associations, will be subject to the post-employment restrictions currently set forth in 12 CFR part 336, subpart C. Thus, for example, the part 336, subpart C rule will continue to prohibit an FDIC examiner who has served as a senior examiner of an insured institution (whether state bank or state savings association) for at least 2 months during the last 12 months of employment with the FDIC from knowingly accepting compensation as an employee, officer, director, or consultant from such insured institution or any company that controls that institution. 12 CFR 336.12(a).

In addition, this notice of proposed rulemaking proposes to revise 12 CFR part 336, subpart B by deleting a reference to the ''Office of Thrift Supervision'' in the definition of ''Federal banking agency'' described in section 336.3(e) and adding the words ''predecessors or'' in front of the word ''successors''. This proposed revision will help avoid any public confusion by deleting the reference to the former Office of Thrift Supervision while retaining the indirect reference to that former agency by adding a reference to ''predecessors'' to the definition of ''Federal Banking agency''. Further, by including predecessor agencies of the FDIC as Federal banking agencies for purposes of this part, the proposed rule would restrict a potential employee who had been associated with a State savings association from future FDIC employment if the potential employee had been subject to a final enforcement action by the former OTS. *See* 12 CFR 336.4(a)(2) and 336.5(a)(2).

II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act (12 U.S.C. 5414(c)) in pertinent part provides that the former OTS's regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the former OTS rules regarding restrictions on post-employment activities of senior examiners currently found in 12 CFR part 390, subpart A, the FDIC, as the appropriate federal banking agency for State savings associations, proposes to rescind these regulations in their entirety. The FDIC believes that the rules found at 12 CFR part 336, subpart C should alone apply to the post-employment activities of senior examiners who examine either insured State banks or insured State savings associations and that the rules found at 12 CFR part 390, subpart A are essentially duplicative to those found in part 336, subpart C. Rescinding part 390, subpart A will serve to streamline the FDIC's rules and eliminate unnecessary regulations.

The FDIC is also proposing in this notice of proposed rulemaking to revise 12 CFR part 336, Subpart B by deleting a reference to the ''Office of Thrift Supervision'' in the definition of ''Federal banking agency'' described in section 336.3(e) and by adding the words ''predecessors or'' in front of the word ''successors''. Deletion of the reference to that former federal agency should help eliminate any public confusion. However, adding the reference to ''predecessors'' in section 336.3(e) provides an indirect reference to the Office of Thrift Supervision if appropriate in the context of subpart B—Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation. With the proposed amendment, even though the OTS no longer exists as Federal banking agency, no person would be permitted to become employed by the FDIC if they

[3] 76 FR 47652 (August 5, 2011).

[4] 70 FR 45323 (August 5, 2005).

had been subject to a final removal or prohibition enforcement order of the former OTS, as a predecessor Federal banking agency to the FDIC.

III. Request for Comments

The FDIC invites comments on all aspects of the proposed rulemaking. In particular, the FDIC requests comments on the following questions:

Are the provisions of 12 CFR part 336, subpart C sufficient to provide consistent post-employment restrictions for the FDIC's senior examiners, regardless of whether the senior examiners evaluated insured state banks or insured State savings associations? Please substantiate your response.

Should part 390, subpart A pertaining to post-employment restrictions for senior examiners be retained in whole or in part? Please substantiate your response.

What negative impacts, if any, can you foresee in the FDIC's proposal to rescind Part 390, Subpart A and remove it from the Code of Federal Regulations and to revise the definition of *Federal banking agency* in section 336.3(e)? Please substantiate your response.

Written comments must be received by the FDIC no later than November 4, 2013.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

The FDIC proposes to rescind and remove from its regulations 12 CFR part 390, subpart A. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 390, Subpart A is redundant and largely duplicative of the FDIC's rule at part 336 regarding the one-year post-employment restrictions for senior examiners. Removing part 390, subpart A and revising the definition of *Federal banking agency* in section 336.3(e) will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq. (RFA), requires that each federal agency either (1) certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities, or (2) prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. Twelve CFR part 336, subpart C was issued as part of an interagency rulemaking designed to implement section 10(k) of the FDI Act, 12 U.S.C. 1820(k). This rule has a limited scope: it imposes post-employment restrictions on certain senior examiners employed by the FDIC and does not impose any obligations or restrictions on banking organizations, including small banking organizations. On this basis, the FDIC certifies that this proposal, if it is adopted in final form, would not have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Notwithstanding this certification, the FDIC invites comments on the impact of this rule on small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390, subpart A and to revise the definition at section 336.3(e) in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

List of Subjects in 12 CFR Parts 336 and 390

Banks, banking; Conflicts of interest; Government employees; Savings associations.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 5412, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 336, subpart B, and part 390, subpart A, of title 12 of the Code of Federal Regulations as follows:

PART 336—FDIC EMPLOYEES

■ 1. The authority citation for part 336 continues to read as follows:

Authority: 61 FR 28728, June 6, 1996, unless otherwise noted.

■ 2. In § 336.3, revise paragraph (e) to read as follows:

§ 336.3 Definitions.

* * * * *

(e) *Federal Banking agency* means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, or their predecessors or successors.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 3. The authority citation for part 390 is amended by removing the additional authority for subpart A.

Authority: 12 U.S.C. 1819.

* * * * *

Subpart A—[Removed and Reserved]

■ 4. Remove and reserve subpart A, consisting of §§ 390.1 through 390.5.

Dated at Washington, DC, this 28th day of August, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–21356 Filed 9–3–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 344 and 390

RIN 3064– AE06

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

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking, the Federal Deposit Insurance Corporation (''FDIC'') proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart K (''part 390, subpart K''), entitled ''Recordkeeping and Confirmation Requirements for Securities Transactions.'' This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (''OTS'') on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). With few exceptions addressed below, the requirements for State savings associations in part 390, subpart K, are substantively similar to those in FDIC's 12 CFR part 344 (''part 344''), which also is entitled ''Recordkeeping and Confirmation Requirements for

Securities Transactions'' and is applicable to State nonmember insured banks and foreign banks having an insured branch.

The FDIC proposes to amend the definition section of part 344 to clarifying that part 344 applies to all insured depository institutions, including State savings associations, for which the FDIC is the appropriate Federal banking agency. The FDIC also proposes to amend part 344 to increase the number of transactions that all FDIC-supervised institutions may effect on behalf of customers under the small transaction exception from certain of the recordkeeping requirements (''Small Transaction Exception'').

Upon removal of part 390, subpart K, and with the proposed changes to part 344, the recordkeeping and confirmation requirements for securities transactions for customers effected by all insured depository institutions for which the FDIC has been designated the appropriate federal banking agency will be found at part 344.

DATES: Comments must be received on or before November 4, 2013.

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

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the agency Web site.
- *FDIC Email: Comments@fdic.gov.* Include RIN #3064–AD82 on the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary consisting of no more than five single-spaced pages. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 1–877–275–3342 or 1–703–562–2200.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

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

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[3] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS's rules transferred to the FDIC governs recordkeeping and confirmation requirements for securities transactions effected for customers by State savings associations. The OTS's rule, formerly found at 12 CFR part 551, was transferred to the FDIC with only nomenclature changes and is now found in the FDIC's rules at part 390, subpart K, entitled *Recordkeeping and Confirmation Requirements for Securities Transactions.* Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 344, entitled *Recordkeeping and Confirmation Requirements for Securities Transactions,* a rule governing recordkeeping and confirmation requirements for securities transactions effected for customers by State nonmember insured banks and insured branches of foreign banks. After careful review and comparison of part 390, subpart K, and part 344, the FDIC

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 12 U.S.C. 5301 *et seq.*

[2] 76 FR 39247 (July 6, 2011).

[3] 76 FR 47652 (Aug. 5, 2011).

proposes to rescind part 390, subpart K, because, as discussed below, it is substantively redundant to existing part 344.

Further to clarify that part 344 applies to all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency, the FDIC proposes to amend section 344.3 of part 344 to remove the definition of ''bank'' and add the definition of ''FDIC-supervised institution'' to the list of defined words. This term and its plural form would replace ''bank,'' ''banks,'' ''state nonmember insured bank (except a District bank)'' and ''foreign bank having an insured branch'' throughout part 344. The FDIC also proposes to amend section 344.2(a)(1) of part 344 to increase the threshold, from 200 transactions to 500 transactions, for the Small Transaction Exception from certain of the provisions of part 344 related to maintaining account records, order tickets, and broker-dealer records, and written securities trading policies and procedures.

FDIC's Existing 12 CFR Part 344

In response to recommendations contained in the *Final Report of the Securities and Exchange Commission on Bank Securities Activities* (June 1977), the FDIC in 1979 adopted part 344 to require banks under its jurisdiction to establish uniform procedures for recordkeeping and confirmation requirements with respect to effecting securities transactions for customers.[4] The purpose of part 344 was two-fold: (1) To ensure that bank customers purchasing securities received adequate information regarding the transaction, and (2) to ensure that the banks maintain adequate records and controls with respect to securities transactions. The FDIC patterned part 344 off of then-existing Securities and Exchange Commission (''SEC'') rules applicable to broker-dealers. At the same time, the FRB and OCC adopted regulations, respectively, substantially similar as part 344 with one minor qualification.[5] The only difference among the FDIC's, FRB's and OCC's (collectively, the ''Agencies'') original final rules was that the OCC included a provision permitting the Comptroller of the Currency to waive any recordkeeping and confirmation requirements in appropriate circumstance.[6]

As noted, the Agencies' rules otherwise were substantively similar. For example, each of the Agencies included a Small Transaction Exception, which is an exception from certain requirements related to maintaining account records, order tickets, and broker/dealer records, and written securities trading policies and procedures for banks having an average of fewer than 200 securities transactions for customers per calendar year over the prior three calendar year period. This exception was promulgated in response to public comment during the Agencies' respective rulemaking processes and is ''in consideration of those comments expressing the view that recordkeeping requirements should be less onerous for smaller banks.''[7] During its rulemaking process, the FDIC proposed a 50-transaction threshold but ultimately adopted the 200-transaction threshold of the current Small Transaction Exception to align the rule with the OCC's and FRB's rules, respectively.[8]

Over time, the FDIC amended part 344 to improve efficiency, reflect market developments, and to be consistent with regulatory changes made by other regulators that affect requirements for recordkeeping and confirmation of securities transactions effected for customers by banks.[9] For example, the FDIC in 1995 adopted an amendment to Part 344 to add express authority for the FDIC's Board of Directors to waive any provision of the part for good cause shown.[10] The other Agencies also amended their rules, respectively, over the course of time to improve efficiency and reflect market developments. As a result, the Agencies' rules remain substantially similar although not identical. For example, the OCC's rule also includes an interpretation clarifying that national banks may satisfy notification requirements electronically, but neither the FRB nor the FDIC has expressly adopted such clarification.[11] However, this distinction is no longer germane in light of the Electronic Signatures in Global National Commerce Act,[12] which provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce.

Former OTS's 12 CFR Part 551 (Transferred to FDIC's Part 390, Subpart K)

In 2002, the OTS adopted 12 CFR part 551 as a final rule governing recordkeeping and confirmation requirements for securities transactions effected by State and Federal savings associations based on the Agencies' recordkeeping and confirmation regulations.[13] However, it made modifications to reflect SEC requirements for registered broker-dealers, investment companies and investment advisors. For example, OTS's part 551 contained a small transaction exception from the general recordkeeping and confirmation requirements savings associations that effected an average of 500 or fewer transactions for customers per year over the three prior calendar years.[14] In its final rule, the OTS noted that it based the 500-transaction threshold of this exception on the de minimis exception for banks from being deemed a ''broker'' under the SEC's definition in section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act''), 15 U.S.C. 78c(a)(4)(B)(xi), as amended by Section 201 of the Gramm-Leach-Bliley Act of 1999[15] (the ''GLB Act'').[16] Briefly, the GLB Act amended the definition of ''broker'' in the Exchange Act to exclude specified bank securities activities from such definition.[17] It also added a de minimis exception that permits banks to effect not more than 500 securities transactions for customers in any calendar year without being considered a broker under the Exchange Act.[18] Under the Exchange Act, State savings associations are included in the definition of ''bank.''[19]

In addition, the OTS's part 551 required that savings associations that maintain and preserve records via micrographic and electronic storage do so in a manner consistent with the SEC's requirements for registered investment companies and investment advisors.[20] This provision required, among other things, that the savings association or the person maintaining

[4] 44 FR 43260, 43261 (July 24, 1979).

[5] *See* 44 FR 43252 (July 24, 1979) (OCC's rule); 44 FR 43256 (July 24, 1979) (FRB's rule).

[6] 44 FR 43256.

[7] 43 FR 51638 (Nov. 6, 1978).

[8] 43 FR 51638; *see* 44 FR 43263.

[9] *See* 72 FR 60546 (Oct. 25, 2007); 62 FR 9915 (Mar. 5, 1997); 60 FR 7111 (Feb. 7, 1995); 45 FR 12775 (Feb. 27, 1980).

[10] 60 FR 7111.

[11] 61 FR 63958, 63956 (Dec. 2, 1996).

[12] Public Law 106–229, 114 Stat. 464 (2000).

[13] 67 FR 76293, 76299 (Dec. 12, 2002); *see* 67 FR 39886 (June 11, 2002).

[14] 12 CFR 551.20(b)(1).

[15] Public Law 106–102, 113 Stat. 1338, 1385 (1999).

[16] 67 FR 39886, 39887 (June 11, 2002).

[17] 15 U.S.C. 78c(a)(4)(B)(i)–(xi).

[18] 15 U.S.C. 78c(a)(4)(B)(xi). By SEC rules, the 500-transaction limit of the de minimis exception applies to the combined total number of bank broker transactions and dealer riskless principal transactions. *See* 17 CFR 240.3a5–1.

[19] 15 U.S.C. 78c(a)(6).

[20] 67 FR 39887; *see* 17 CFR 270.31a–2(f); 17 CR 275.204–2(g).

records on its behalf, arrange and index the records in a certain manner and separately store the original record from a duplicative copy of the record.[21]

With respect to the OTS's requirements related to micrographic and electronic storage of records that were transferred to part 390, subpart K, section 390.205(b), while not required by the FDIC's part 344, these provisions are largely outdated and unnecessary in light of the current industry practice of utilizing and storing electronic records in a manner consistent with the SEC's guidelines, especially regarding indexing records and maintaining backup records. Further the Agencies have specific interagency policies relating to backing up electronic records.[22] Accordingly, the FDIC sees no need to impose these requirements on all FDIC-supervised institutions at this point but solicits specific commentary on whether any existing provision of Part 344 is outdated or unnecessary in light of industry practice or technological advances.

Despite the differences addressed above and minor technical nuances,[23] the OTS's rule was otherwise substantively similar to the Agencies' recordkeeping and confirmation rules, including the FDIC's part 344. After careful comparison of the FDIC's part 344 that existed before the OTS rules were transferred with the transferred OTS rule on recordkeeping and confirmation requirements for securities transactions, the FDIC has concluded that the transferred OTS rules found at part 390, subpart K, are substantively redundant. Therefore, based on the above, the FDIC proposes to rescind and remove from the Code of Federal Regulations the rules located at Part 390, Subpart K.

Additionally, the FDIC recognizes that some State savings associations availed themselves of the small transaction exception in OTS's 12 CFR part 551 from certain recordkeeping and written policies and procedures requirements if effecting and average of 500 or fewer transactions for customers per year over a three calendar year period. This provision was transferred to section 390.201(b)(1) of part 390, subpart K. The threshold of FDIC's Small Transaction Exception in part 344 has been limited to 200 securities transactions since 1979, even though bank securities activities have increased over the past three decades. In 1999, Congress recognized the increase in bank securities activities when it enacted Title II of the GLB Act to carve out certain bank securities activities from the Exchange Act's definition of ''broker,'' including the de minimis exception for banks effecting not more than 500 transactions in a calendar year. As such, it is appropriate now for the FDIC to propose increasing, from 200 transactions to 500 transactions, the threshold for all FDIC-supervised institutions availing themselves of the Small Transaction Exception in Part 344. This action would ensure parity for recordkeeping and confirmation purposes for State savings associations and all other FDIC-supervised institutions bound by part 344.

II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act, 12 U.S.C. 5414(b)(3), in pertinent part, provides that the former OTS's regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the rules currently found in part 390, subpart K, the FDIC, as the appropriate federal banking agency for State savings associations, proposes to rescind part 390, subpart K, in its entirety. The FDIC also proposes to amend section 344.3 to remove ''bank'' from the list of defined terms and to add the definition of ''FDIC-supervised institution'' to this list. ''FDIC-supervised institution'' would mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q). Under the Proposal, the term ''FDIC-supervised institution'' and its plural form would replace ''bank,'' ''banks,'' ''state nonmember insured bank (except a District bank)'' and ''foreign bank(s) having an insured branch'' throughout part 344. If the proposal is finalized, the recordkeeping and confirmation requirements in part 344 would apply to all FDIC-supervised institutions that effect securities transactions for customers, and part 390, subpart K would be removed because it is largely redundant of those rules found in part 344. Rescinding part 390, subpart K, will serve to streamline the FDIC's rules and eliminate unnecessary regulations.

In addition, the FDIC proposes to amend section 344.2(a)(1) to raise the threshold for the Small Transaction Exception applicable to all FDIC-supervised institutions effecting securities transactions for customers, from 200 transactions to 500 transactions, per calendar year over the prior three calendar year period.

III. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

(1) Are there any specific provisions of part 344 that are technologically outdated or obsolete, or are behind industry standards? If so, please describe and recommend alternate recordkeeping methodology.

(2) Are the provisions of the proposed part 344 sufficient to provide consistent and effective recordkeeping and confirmation requirements for all FDIC-supervised institutions? Please substantiate your answer.

(3) What impacts, positive or negative, can you foresee in the FDIC's proposal to rescind part 390, subpart K?

Written comments must be received by the FDIC no later than November 4, 2013.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The Proposed Rule would rescind and remove from FDIC regulations part 390, subpart K. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 390, subpart K, is largely redundant of the FDIC's existing Part 344 regarding recordkeeping and confirmation requirements effected by State nonmember banks and insured branches of foreign banks. The information collections contained in part 344 are cleared by OMB under the FDIC's ''Recordkeeping and Confirmation Requirements for Securities Transactions'' information collection (OMB No. 3064–0028). The FDIC's burden estimates were updated in connection with the collection's 2012 renewal to include State savings associations transferred from the OTS to the FDIC. Thus, this provision of the Proposed Rule will not involve any new collections of information pursuant to the PRA.

[21] 12 CFR 390.205; *see* 12 CFR 551.60 (2011).

[22] *See* Fed. Fin. Inst. Examination Council, IT Examination Handbook: Information Security (2006), *available at http://ithandbook.ffiec.gov/it-booklets.aspx.*

[23] Most notably, the OTS's part 551 divided recordkeeping and confirmation requirements into separate subparts; titled each section of text in question-and-answer format; and included descriptive charts.

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

Finally, the Proposed Rule would amend section 344.3 to remove the definition of ''bank'' from the list of defined terms and add the definition of ''FDIC-supervised institution.'' This measure is to clarify throughout Part 344 that State savings associations, as well as State nonmember insured banks and foreign banks having insured branches are all subject to part 344. Thus, this provision of the Proposed Rule will not involve any new collections of information under the PRA or impact current burden estimates.

Based on the above, no information collection request has been submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million).[24] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in this notice of proposed rulemaking, part 390, subpart K, was transferred from OTS's part 551, which governed recordkeeping and confirmation requirements for Federal and State savings associations that effect securities transactions for customers. OTS's part 551 had been in effect since 2002, and all State savings associations were required to comply with it. Because it is redundant of existing part 344 of the FDIC's Rules, the FDIC proposes rescinding and removing part 390, subpart K. As a result, all FDIC-supervised institutions—including State savings associations—would be required to comply with part 344 if they effect securities transactions for customers. Because all State savings associations have been required to comply with substantially similar recordkeeping and confirmation rules when they effected securities transactions for customers since 2002, today's Proposal would have no significant economic impact on any State savings association.

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

C. Plain Language

Section 722 of the GLB Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[25] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently under way. As part of that review, the FDIC invites comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

List of Subjects

12 CFR Part 344

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

12 CFR Part 390

Reporting and recordkeeping requirements.

[24] 5 U.S.C. 601 *et seq.*

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

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend parts 344 and 390 of title 12 of the Code of Federal Regulations as set forth below:

■ 1. Revise part 344 to read as follows:

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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

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

§ 344.1 Purpose and scope.

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

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

§ 344.2 Exceptions.

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

(1) *Small number of transactions.* The requirements of §§ 344.4(a)(2) through (4) and 344.8(a)(1) through (3) do not apply to an FDIC-supervised institution effecting an average of fewer than 500 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

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

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

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

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

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

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

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

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

§ 344.3 Definitions.

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

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

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

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

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

(d) *Completion of the transaction* means:

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

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

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

(f) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which an FDIC-supervised

institution effects or participates in effecting the purchase or sale of securities, but does not include a broker, dealer, insured depository institution acting as a broker or a dealer, issuer of the securities that are the subject of the transaction or a person or account having a direct, contractual agreement with a fully disclosed broker/dealer.

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

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

(i) *Government security* means:

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

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

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

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

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

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

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

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

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

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

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

(2) A loan participation;

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

(4) Currency;

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

(6) Units of a collective investment fund;

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

(8) U.S. Savings Bonds.

§ 344.4 Recordkeeping.

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

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

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

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price;

(iv) Trade date; and

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

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

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash; and

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

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

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

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

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

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

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

(vi) The broker/dealer utilized;

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

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

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

§ 344.5 Content and time of notification.

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

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

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

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

(1) Name of the FDIC-supervised institution;

(2) Name of the customer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) In the case of a transaction in a debt security, other than a government

security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

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

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

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

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

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

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

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

(d) *Cash management sweep accounts.* An FDIC-supervised institution effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security takes place in the account and not less than once every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), FDIC-supervised institutions that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of 17 CFR 403.5(d).

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

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

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

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

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

§ 344.7 Settlement of securities transactions.

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

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

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

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

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

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

§ 344.8 Securities trading policies and procedures.

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

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

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

(ii) Execute transactions in securities for customers;

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

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

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

(b) [Reserved]

§ 344.9 Personal securities trading reporting by bank officers and employees.

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

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

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

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

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

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

(2) Transactions in registered investment company shares;

(3) Transactions in government securities; and

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

(c) *Alternative report.* Where an FDIC-supervised institution acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the FDIC-supervised institution's officers and employees may fulfill their reporting requirement under paragraph (a) of this section by filing with the FDIC-supervised institution the ''access persons'' personal securities trading report required by SEC Rule 17j–1, 17 CFR 270.17j–1.

§ 344.10 Waivers.

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

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 2. The authority citation for part 390 is amended by removing the additional authority for subpart K.

Authority: 12 U.S.C. 1819.

* * * * *

Subpart K—[Removed and Reserved]

■ 3. Remove and reserve subpart K, consisting of §§ 390.200 through 390.255.

Dated at Washington, DC, this 28th day of August, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–21357 Filed 9–3–13; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1186; Airspace Docket No. 12–ASO–32]

Proposed Establishment of Class E Airspace; Chatom, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Chatom, AL, to accommodate the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Roy Wilcox Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before October 21, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–1186; Airspace Docket No. 12–ASO–32, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–1186; Airspace Docket No. 12–ASO–32) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–1186; Airspace Docket No. 12–ASO–32.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel

concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Chatom, AL, providing the controlled airspace required to support the RNAV (GPS) standard instrument approach procedures for Roy Wilcox Airport. Controlled airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport would be established for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 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 Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Roy Wilcox Airport, Chatom, AL.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment:

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

Chatom, AL [New]

Roy Wilcox Airport, AL
(Lat. 31°27′07″ N., long. 88°11′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Roy Wilcox Airport.

Issued in College Park, Georgia, on August 26, 2013.

Kip B. Johns,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–21498 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0440; Airspace Docket No. 13–ASO–10]

Proposed Establishment of Class E Airspace; Star, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Star, NC, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) serving Montgomery County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before October 21, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0440; Airspace Docket No. 13–ASO–10, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0440; Airspace Docket No. 13–ASO–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0440; Airspace Docket No. 13–ASO–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Star, NC, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Montgomery County Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 6.8-mile radius of the airport.

Class E airspace designations are published in Paragraph 6005 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 Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Montgomery County Airport, Star, NC.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment:

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

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

* * * * *

ASO NC E5 Star, NC [New]

Montgomery County Airport, NC

(Lat. 35°23′05″ N., long. 79°47′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Montgomery County Airport.

Issued in College Park, Georgia, on August 26, 2013.

Kip B. Johns,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–21500 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0280; Airspace Docket No. 13–ANM–13]

Proposed Establishment of Class E Airspace; Ennis, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Ennis-Big Sky Airport, Ennis, MT. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Ennis-Big Sky Airport, Ennis, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before October 21, 2013.

ADDRESSES: Send comments on this proposal 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; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0280; Airspace Docket No. 13–ANM–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0280 and Airspace Docket No. 13–ANM–13) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0280 and Airspace Docket No. 13–ANM–13''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Ennis-Big Sky Airport, Ennis, MT, along with a segment extending from 1,200 feet above the surface. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Ennis-Big Sky Airport, Ennis, MT. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, 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 Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for 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 proposed regulation is within the scope of that authority as it would establish controlled airspace at Ennis-Big Sky Airport, Ennis, MT.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

■ 1. The authority citation for 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 the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

ANM MT E5 Ennis, MT [New]

Ennis-Big Sky Airport, Ennis, MT
(Lat. 45°16′28″ N., long. 111°38′56″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ennis-Big Sky Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°09′00″ N., long. 112°04′00″ W.; to lat. 45°50′00″ N., long. 111°33′00″ W.; to lat. 45°33′00″ N., long. 111°32′00″ W.; to lat. 45°11′00″ N., long. 111°27′00″ W.; to lat. 45°07′00″ N., long. 111°44′00″ W.; to lat. 45°20′00″ N., long. 112°00′00″ W.; to lat. 45°40′00″ N., long. 111°49′00″ W.; to lat. 45°51′00″ N., long. 112°27′00″ W.; to lat. 46°08′00″ N., long. 112°15′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on August 16, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–21501 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–5650–N–05]

Native American Housing Assistance and Self-Determination Act of 1996: Announcement of Negotiated Rulemaking Committee Meeting

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: This notice announces the second meeting of the negotiated rulemaking committee.

DATES: The meeting will be held on Tuesday, September 17, 2013, Wednesday, September 18, 2013, and Thursday, September 19, 2013. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5:00 p.m.

ADDRESSES: The meeting will take place at the Grand Hyatt Hotel, 1750 Welton Street, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing and Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations governing the IHBG formula allocation are codified in subpart D of part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made.

On June 12, 2013 (78 FR 35178), HUD announced in the **Federal Register** the list of proposed members for the negotiated rulemaking committee, and requested additional public comment on the proposed membership. On July 30, 2013 (78 FR 45903) after considering public comments, HUD published the final list of committee members and announced the date of the first negotiated rulemaking meeting. The first negotiated rulemaking meeting was schedule for August 27, 2013, and August 28, 2013, in Denver, Colorado.

II. Second Committee Meeting

The second meeting of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee will be held on Tuesday, September 17, 2013, Wednesday, September 18, 2013, and Thursday, September 19, 2013. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5:00 p.m. The meetings will take place at the Grand Hyatt Hotel, 1750 Welton Street, Denver, Colorado, 80202.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Future Committee Meetings

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: August 14, 2013.

Sandra Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2013–21610 Filed 9–3–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2012–0005; 13XE1700DX EX1SF0000.DAQ000 EEEE500000]

RIN 1014–AA10

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems

Correction

In proposed rule document 2013–19861, appearing on pages 52240 through 52284 in the issue of Thursday, August 22, 2013, make the following corrections:

1. On pages 52241 through 52242, the table should read as follows:

Current regulation	Proposed rule
§ 250.800 General requirements	§ 250.800 General.
250.801 Subsurface safety devices	§ 250.810 Dry tree subsurface safety devices—general.
	§ 250.811 Specifications for subsurface safety valves (SSSVs)—dry trees.
	§ 250.812 Surface-controlled SSSVs—dry trees.
	§ 250.813 Subsurface-controlled SSSVs.
	§ 250.814 Design, installation, and operation of SSSVs—dry trees.
	§ 250.815 Subsurface safety devices in shut-in wells—dry trees.
	§ 250.816 Subsurface safety devices in injection wells—dry trees.
	§ 250.817 Temporary removal of subsurface safety devices for routine operations.
	§ 250.818 Additional safety equipment—dry trees.
	§ 250.821 Emergency action.
	§ 250.825 Subsea tree subsurface safety devices—general.
	§ 250.826 Specifications for SSSVs—subsea trees.
	§ 250.827 Surface-controlled SSSVs—subsea trees.
	§ 250.828 Design, installation, and operation of SSSVs—subsea trees.
	§ 250.829 Subsurface safety devices in shut-in wells—subsea trees.
	§ 250.830 Subsurface safety devices in injection wells—subsea trees.
	§ 250.832 Additional safety equipment—subsea trees.
	§ 250.837 Emergency action and safety system shutdown.
§ 250.802 Design, installation, and operation of surface production-safety systems.	§ 250.819 Specification for surface safety valves (SSVs).
	§ 250.820 Use of SSVs.
	§ 250.833 Specification for underwater safety valves (USVs).
	§ 250.834 Use of USVs.
	§ 250.840 Design, installation, and maintenance—general.
	§ 250.841 Platforms.

Current regulation	Proposed rule
	§ 250.842 Approval of safety systems design and installation features.
§ 250.803 Additional production system requirements	§ 250.850 Production system requirements—general.
	§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.
	§ 250.852 Flowlines/Headers.
	§ 250.853 Safety sensors.
	§ 250.855 Emergency shutdown (ESD) system.
	§ 250.856 Engines.
	§ 250.857 Glycol dehydration units.
	§ 250.858 Gas compressors.
	§ 250.859 Firefighting systems.
	§ 250.862 Fire and gas-detection systems.
	§ 250.863 Electrical equipment.
	§ 250.864 Erosion.
	§ 250.869 General platform operations.
	§ 250.871 Welding and burning practices and procedures.
§ 250.804 Production safety-system testing and records	§ 250.880 Production safety system testing.
	§ 250.890 Records.
§ 250.805 Safety device training	§ 250.891 Safety device training.
§ 250.806 Safety and pollution prevention equipment quality assurance requirements.	§ 250.801 Safety and pollution prevention equipment (SPPE) certification.
	§ 250.802 Requirements for SPPE.
§ 250.807 Additional requirements for subsurface safety valves and related equipment installed in high pressure high temperature (HPHT) environments.	§ 250.804 Additional requirements for subsurface safety valves (SSSVs) and related equipment installed in high pressure high temperature (HPHT) environments.
§ 250.808 Hydrogen sulfide	§ 250.805 Hydrogen sulfide.
New Sections	§ 250.803 What SPPE failure reporting procedures must I follow?
	§ 250.831 Alteration or disconnection of subsea pipeline or umbilical.
	§ 250.835 Specification for all boarding shut down valves (BSDV) associated with subsea systems.
	§ 250.836 Use of BSDVs.
	§ 250.838 What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system?
	§ 250.839 What are the maximum allowable valve closure times and hydraulic bleeding requirements for a direct-hydraulic control system?
	§ 250.854 Floating production units equipped with turrets and turret mounted systems.
	§ 250.860 Chemical firefighting system.
	§ 250.861 Foam firefighting system.
	§ 250.865 Surface pumps.
	§ 250.866 Personal safety equipment.

Current regulation	Proposed rule
	§ 250.867 Temporary quarters and temporary equipment.
	§ 250.868 Non-metallic piping.
	§ 250.870 Time delays on pressure safety low (PSL) sensors.
	§ 250.872 Atmospheric vessels.
	§ 250.873 Subsea gas lift requirements.
	§ 250.874 Subsea water injection systems.
	§ 250.875 Subsea pump systems.
	§ 250.876 Fired and Exhaust Heated Components.

2. On page 52251, the table should read as follows:

Item name	Allowable leakage rate testing requirements under current regulations	The increased allowable leakage rate testing requirements for the proposed rule
Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Tubing plug.	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Injection valves.	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
USVs.	0 leakage rate.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Flow safety valves (FSV).	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.

3. On page 52254, Table 2 should read as follows:

Table 2: ANNUAL COST PER SMALL ENTITY (10-YEAR AVERAGE)[1]

	10-Year Average
1) Reporting after a failure of SPPE equipment.	$168
2) Notifying BSEE about technical issues.	$378
3) Certification, submission, and maintenance of designs and diagrams.	$1,730
4) Inspection, testing, and certification of foam firefighting systems.	$757
5) Five-year inspection of fired and exhaust heated components.	$5,000
6) Submission of contact list for OCS platforms.	$127
7) Familiarization with new regulation.	$22
Most likely average annual cost per small entity (4 + 5 + 6 + 7).	**$5,906**
Complete compliance scenario average annual cost per small entity.	**$8,183**

[1] Totals may not add because of rounding.

4. On pages 52256 through 52260, the table should read as follows:

Citation 30 CFR 250, Subpart A	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
107(c)(2)	**NEW:** Demonstrate to us that by using BAST the benefits are insufficient to justify the cost.	5	2 justifications	10
Subtotal			**2 responses**	**10 hours**
Citation 30 CFR 250 Subpart H and NTL(s)	**Reporting and Recordkeeping Requirement**	**Hour Burden**	**Average No. of Annual Responses**	**Annual Burden Hours**
		Non-Hour Cost Burdens*		
General Requirements				
800(a)	Requirements for your production safety system application.	Burden included with specific requirements below.		0
800(a); 880(a);	Prior to production, request approval of pre-production inspection; notify BSEE 72 hours before commencement so we may witness preproduction test and conduct inspection.	1	76 requests	76
801(c)	Request evaluation and approval [OORP] of other quality assurance programs covering manufacture of SPPE.	2	1 request	2
802(c)(1); 852(e)(4); 861(b);	**NEW:** Submit statement/certification for: exposure functionality; pipe is suitable and manufacturer has complied with IVA; suitable firefighting foam per original manufacturer specifications.	Not considered IC under 5 CFR 1320.3(h)(1).		0
802(c)(5)	**NEW:** Document all manufacturing, traceability, quality control, and inspection requirements. Retain required documentation until 1 year after the date of decommissioning the equipment.	2	30 documents	60
803(a)	**NEW:** Within 30 days of discovery and identification of SPPE failure, provide a written report of equipment failure to manufacturer.	2	10 reports	20
803(b)	**NEW:** Document and determine the results of the SPPE failure within 60-days and corrective action taken.	5	10 documents	50
803(c)	**NEW:** Submit [OORP] modified procedures you made if notified by manufacturer of design changes or you changed operating or repair procedures as result of a failure, within 30 days.	2	1 submittal	2
804	Submit detailed info regarding installing SSVs in an HPHT environment with your APD, APM, DWOP etc.	Burdens are covered under 30 CFR 250, Subparts D and B, 1014-0018 and 1014-0024.		0
804(b); 829(b), (c); 841(b);	**NEW:** District Manager will approve on a case-by-case basis.	Not considered IC per 5 CFR 1320.3(h)(6).		0

		Subtotal	**128 responses**	**210 hours**
Surface and Subsurface Safety Systems – Dry Trees				
810; 816; 825(a); 830;	Submit request for a determination that a well is incapable of natural flow.	5 ¾	41wells	246
	Verify the no-flow condition of the well annually.	¼		
814(a); 821; 828(a); 838(c)(3); 859(b); 870(b);	Specific alternate approval requests requiring approval.	Burden covered under 30 CFR 250, subpart A, 1014-0022.		0
817(b); 869(a);	Identify well with sign on wellhead that sub-surface safety device is removed; flag safety devices that are out of service; a visual indicator must be used to identify the bypassed safety device.	Usual/customary safety procedure for removing or identifying out-of-service safety devices.		0
817(b)	Record removal of subsurface safety device.	Burden included in § 250.890 of this subpart.		0
817(c)	Request alternate approval of master valve [required to be submitted with an APM].	Burden covered under 30 CFR 250, subpart D, 1014-0018.		0
		Subtotal	**41 responses**	**246 hours**
Subsea and Subsurface Safety Systems – Subsea Trees				
825(b); 831; 833; 837(c)(5); 838(c); 874(g)(2); 874(f);	**NEW:** Notify BSEE: (1) if you cannot test all valves and sensors; (2) 48 hours in advance if monitoring ability affected; (3) designating USV2 or another qualified valve; (4) resuming production; (5) 12 hours of detecting loss of communication; immediately if you cannot meet value closure conditions.	Notifications		7
		(1) ½	6	
		(2) 2	1	
		(3) 1	1	
		(4) ½	1	
		(5) ½	1	
827	**NEW:** Request remote location approval.	1	1 request	1
831	**NEW:** Submit a repair/replacement plan to monitor and test.	2	1 submittal	2
837(a)	**NEW:** Request approval to not shut-in a subsea well in an emergency.	½	10 requests	5
837(b)	**NEW:** Prepare and submit for approval a plan to shut-in wells affected by a dropped object.	2	1 submittal	2
837(c)(2)	**NEW:** Obtain approval to resume production re P/L PSHL sensor.	½	2 approvals	1
838(a); 839(a)(2);	**NEW:** Verify closure time of USV upon request of District Manager.	2	2 verifications	4
838(c)(3)	**NEW:** Request approval to produce after loss of communication; include alternate valve closure table.	2	1 approval	2
		Subtotal	**28 responses**	**24 hours**
Production Safety Systems				
842;	Submit application, and all required/supporting information, for a production safety system with > 125 components.	16	1 application	16
		$5,030 per submission x 1 = $5,030 $13,238 per offshore visit x 1 = $13,238 $6,884 per shipyard visit x 1 = $6,884		
	25 – 125 components.	13	10 applications	130

		$1,218 per submission x 10 = $12,180 $8,313 per offshore visit x 1 = $8,313 $4,766 per shipyard visit x 1 = $4,766		
	< 25 components.	8	20 applications	160
		$604 per submission x 20 = $12,080		
	Submit modification to application for production safety system with > 125 components.	9	180 modifications	1,620
		$561 per submission x 180 = $100,980		
	25 – 125 components.	7	758 modifications	5,306
		$201 per submission x 758 = $152,358		
	< 25 components.	5	329 modifications	1,645
		$85 per submission x 329 = $27,965		
842(b)	**NEW:** Your application must also include certification(s) that the designs for mechanical and electrical systems were reviewed, approved, and stamped by registered professional engineer. [NOTE: Upon promulgation, these certification production safety systems requirements will be consolidated into the application hour burden for the specific components.]	6	32 certifications	192
842(c)	**NEW:** Submit a certification letter that the mechanical and electrical systems were installed in accordance with approved designs.	6	32 letters	192
842(d), (e);	**NEW:** Submit a certification letter within 60-days after production that the as-built diagrams, piping, and instrumentation diagrams are on file, certified correct, and stamped by a registered professional engineer; submit all the as-built diagrams.	6 ½	32 letters	208
842(f)	**NEW:** Maintain records pertaining to approved design and installation features and as-built pipe and instrumentation diagrams at your offshore field office or location available to the District Manager; make available to BSEE upon request and retained for the life of the facility.	½	32 records	16
		Subtotal	**1,426 responses**	**9,485 hours**
			$343,794 non-hour cost burdens	
Additional Production System Requirements				
851(a)(4)	**NEW:** Request approval to use uncoded pressure and fired vessels beyond their 18 months of continued use.	2	1 request	2
851(b); 852(a)(3); 858(c); 865(b);	Maintain [most current] pressure-recorder information at location available to the District Manager for as long as information is valid.	23	615 records	14,145
851(c)(2)	**NEW:** Request approval from District Manager for activation limits set less than 5	1	10 requests	10

	psi.			
852(c)(1)	**NEW:** Request approval from District Manager to vent to some other location.	1	10 requests	10
852(c)(2)	**NEW:** Request a different sized PSV.	1	1 request	5
852(c)(2)	**NEW:** Request different upstream location of the PSV.	1	5 request	5
852(e)	Submit required design documentation for unbonded flexible pipe.	Burden is covered by the application requirement in § 250.842.		0
855(b)	Maintain ESD schematic listing control function of all safety devices at location conveniently available to the District Manager for the life of the facility.	15	615 listings	9,225
858(b)	**NEW:** Request approval from District Manager to use different procedure for gas-well gas affected.	1	1 request	1
859(a)(2)	Request approval for alternate firefighting system.	Burden covered under 30 CFR 250, subpart A, 1014-0022.		0
859(a)(3), (4)	Post diagram of firefighting system; furnish evidence firefighting system suitable for operations in subfreezing climates.	5	38 postings	190
859(b)	**NEW:** Request extension from District Manager up to 7 days of your approved departure to use chemicals.	Burden covered under 30 CFR 250, subpart A, 1014-0022.		0
860(a); related NTL(s)	Request approval, including but not limited to, submittal of justification and risk assessment, to use chemical only fire prevention and control system in lieu of a water system.	22	31 requests	682
860(b)	**NEW:** Minor change(s) made after approval rec'd re 860(a) - document change; maintain the revised version at facility or closest field office for BSEE review/inspection; maintain for life of facility.	½	10 minor changes	5
860(b)	**NEW:** Major change(s) made after approval rec'd re 860(a) - submit new request w/updated risk assessment to District Manager for approval; maintain at facility or closest field office for BSEE review/inspection; maintain for life of facility.	2	1 major change	2
861(b)	**NEW:** Submit foam concentrate samples annually to manufacturer for testing.	2	500 submittals	1,000
864	Maintain erosion control program records for 2 years; make available to BSEE upon request.	12	615 records	7,380
867(a)	**NEW:** Request approval from District Manager to install temporary quarters.	6	1 request	6
867(b)	**NEW:** Submit supporting information/documentation if required by District Manager to install a temporary firewater system.	1	1 request	1
867(c)	**NEW:** Request approval form District manager to use temporary equipment for	1	300 requests	300

	well testing/clean-up.			
869(a)(3)	**NEW:** Request approval from District Manager to bypass an element of ESS.	1	2 requests	2
870	**NEW:** Document PSL on your field test records w/delay greater than 45 seconds.	½	6 records	3
871	Request variance from District Manager on approved welding and burning practices.	Burden covered under 30 CFR 250, subpart A – 1014-0022.		0
874(g)(2), (3)	**NEW:** Submit request to District Manager with alternative plan ensuring subsea shutdown capability.	2	5 requests	10
874(g)(3)	**NEW:** Request approval from District Manager to forgo WISDV testing.	1	10 requests	10
874(f)(2)	**NEW:** Request approval from District Manager to continue to inject w/loss of communication.	1	5 requests	5
874(f)(2)	**NEW:** Request alternate hydraulic bleed schedule.	Burden covered under 30 CFR 250, subpart A, 1014-0022.		0
		Subtotal	**2,783 responses**	**32,999 hours**
Safety Device Testing				
880(a)(3)	**NEW:** Notify BSEE and receive approval before performing modifications to existing subsea infrastructure.	Burden covered under 30 CFR 250, subpart A 1014-0022.		0
880(c)(5)(vi)	**NEW:** Request approval for disconnected well shut-in to exceed more than 2 years.	1	1 request	1
		Subtotal	**1 response**	**1 hour**
Records and Training				
890	Maintain records for 2 years on subsurface and surface safety devices to include, but limited to, status and history of each device; approved design & installation date and features, inspection, testing, repair, removal, adjustments, reinstallation, etc.; at field office nearest facility AND a secure onshore location; make records available to BSEE.	36	615 records	22,140
890(c)	**NEW:** Submit annually to District Manager a contact list for all OCS operated platforms or submit when revised.	½	1,000 annual lists	550
		½	100 revised lists	
		Subtotal	**1,715 responses**	**22,690 hours**
Total Burden Hours			**6,124 Responses**	**65,665 Hours**
			$343,794 Non-Hour Cost Burdens	

BILLING CODE 1505–01–C

5. On page 52271, the table should read as follows:

You must submit:	Details and/or additional requirements:
(1) A schematic piping and instrumentation diagram	Showing the following: (i) Well shut-in tubing pressure; (ii) Piping specification breaks, piping sizes; (iii) Pressure relief valve set points; (iv) Size, capacity, and design working pressures of separators, flare scrubbers, heat exchangers, treaters, storage tanks, compressors and metering devices;

You must submit:	Details and/or additional requirements:
	(v) Size, capacity, design working pressures, and maximum discharge pressure of hydrocarbon-handling pumps; (vi) size, capacity, and design working pressures of hydrocarbon-handling vessels, and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid as described in API RP 500 and 505 (both incorporated by reference as specified in § 250.198). (vii) Size and maximum allowable working pressures as determined in accordance with API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems (incorporated by reference as specified in § 250.198).
(2) A safety analysis flow diagram (API RP 14C, Appendix E) and the related Safety Analysis Function Evaluation (SAFE) chart (API RP 14C, subsection 4.3.3) (incorporated by reference as specified in § 250.198).	if processing components are used, other than those for which Safety Analysis Checklists are included in API RP 14C, you must use the same analysis technique and documentation to determine the effects and requirements of these components upon the safety system.
(3) Electrical system information, including	(i) A plan for each platform deck and outlining all classified areas. You must classify areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2; or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2 (both incorporated by reference as specified in § 250.198). (ii) Identification of all areas where potential ignition sources, including non-electrical ignition sources, are to be installed showing: (A) All major production equipment, wells, and other significant hydrocarbon sources, and a description of the type of decking, ceiling, and walls (*e.g.,* grating or solid) and firewalls and; (B) the location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the primary wiring method (*e.g.,* type cable, conduit, wire) and; (iii) one-line electrical drawings of all electrical systems including the safety shutdown system. You must also include a functional legend.
(4) Schematics of the fire and gas-detection systems	showing a functional block diagram of the detection system, including the electrical power supply and also including the type, location, and number of detection sensors; the type and kind of alarms, including emergency equipment to be activated; the method used for detection; and the method and frequency of calibration.
(5) The service fee listed in § 250.125.	The fee you must pay will be determined by the number of components involved in the review and approval process.

6. On page 52272, the table should read as follows:

Item name	Applicable codes and requirements
(1) Pressure and fired vessels where the operating pressure is or will be 15 pounds per square inch gauge (psig) or greater.	(i) Must be designed, fabricated, and code stamped according to applicable provisions of sections I, IV, and VIII of the ANSI/ASME Boiler and Pressure Vessel Code. (ii) Must be repaired, maintained, and inspected in accordance with API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment (incorporated by reference as specified in § 250.198).
(2) Pressure and fired vessels (such as flare and vent scrubbers) where the operating pressure is or will be at least 5 psig and less than 15 psig.	Must employ a safety analysis checklist in the design of each component. These vessels do not need to be ASME Code stamped as pressure vessels.
(3) Pressure and fired vessels where the operating pressure is or will be less than 5 psig.	Are not subject to the requirements of paragraphs (a)(1) and (a)(2).
(4) Existing uncoded Pressure and fired vessels (i) in use on the effective date of the final rule; (ii) with an operating pressure of 5 psig or greater; and (iii) that are not code stamped in accordance with the ANSI/ASME Boiler and Pressure Vessel Code.	Must be justified and approval obtained from the District Manager for their continued use beyond 18 months from the effective date of the final rule.

Item name	Applicable codes and requirements
(5) Pressure relief valves	(i) Must be designed and installed according to applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. (ii) Must conform to the valve sizing and pressure-relieving requirements specified in these documents, but (except for completely redundant relief valves), must be set no higher than the maximum-allowable working pressure of the vessel. (iii) And vents must be positioned in such a way as to prevent fluid from striking personnel or ignition sources.
(6) Steam generators operating at less than 15 psig	Must be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level.
(7) Steam generators operating at 15 psig or greater	(i) Must be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level. (ii) You must also install a water-feeding device that will automatically control the water level except when closed loop systems are used for steam generation.

7. On pages 52275 through 52276, the table should read as follows:

For the use of a chemical firefighting system on major and minor manned platforms, you must provide the following in your risk assessment . . .	Including . . .
(i) Platform description	(A) The type and quantity of hydrocarbons (*i.e.,* natural gas, oil) that are produced, handled, stored, or processed at the facility. (B) The capacity of any tanks on the facility that you use to store either liquid hydrocarbons or other flammable liquids. (C) The total volume of flammable liquids (other than produced hydrocarbons) stored on the facility in containers other than bulk storage tanks. Include flammable liquids stored in paint lockers, storerooms, and drums. (D) If the facility is manned, provide the maximum number of personnel on board and the anticipated length of their stay. (E) If the facility is unmanned, provide the number of days per week the facility will be visited, the average length of time spent on the facility per day, the mode of transportation, and whether or not transportation will be available at the facility while personnel are on board. (F) A diagram that depicts: quarters location, production equipment location, fire prevention and control equipment location, lifesaving appliances and equipment location, and evacuation plan escape routes from quarters and all manned working spaces to primary evacuation equipment.
(ii) Hazard assessment (facility specific)	(A) Identification of all likely fire initiation scenarios (including those resulting from maintenance and repair activities). For each scenario, discuss its potential severity and identify the ignition and fuel sources. (B) Estimates of the fire/radiant heat exposure that personnel could be subjected to. Show how you have considered designated muster areas and evacuation routes near fuel sources and have verified proper flare boom sizing for radiant heat exposure.
(iii) Human factors assessment (not facility specific)	(A) Descriptions of the fire-related training your employees and contractors have received. Include details on the length of training, whether the training was hands-on or classroom, the training frequency, and the topics covered during the training. (B) Descriptions of the training your employees and contractors have received in fire prevention, control of ignition sources, and control of fuel sources when the facility is occupied. (C) Descriptions of the instructions and procedures you have given to your employees and contractors on the actions they should take if a fire occurs. Include those instructions and procedures specific to evacuation. State how you convey this information to your employees and contractor on the platform.

For the use of a chemical firefighting system on major and minor manned platforms, you must provide the following in your risk assessment . . .	Including . . .
(iv) Evacuation assessment (facility specific)	(A) A general discussion of your evacuation plan. Identify your muster areas (if applicable), both the primary and secondary evacuation routes, and the means of evacuation for both. (B) Description of the type, quantity, and location of lifesaving appliances available on the facility. Show how you have ensured that lifesaving appliances are located in the near vicinity of the escape routes. (C) Description of the types and availability of support vessels, whether the support vessels are equipped with a fire monitor, and the time needed for support vessels to arrive at the facility. (D) Estimates of the worst case time needed for personnel to evacuate the facility should a fire occur.
(v) Alternative protection assessment	(A) Discussion of the reasons you are proposing to use an alternative fire prevention and control system. (B) Lists of the specific standards used to design the system, locate the equipment, and operate the equipment/system. (C) Description of the proposed alternative fire prevention and control system/equipment. Provide details on the type, size, number, and location of the prevention and control equipment. (D) Description of the testing, inspection, and maintenance program you will use to maintain the fire prevention and control equipment in an operable condition. Provide specifics regarding the type of inspection, the personnel who conduct the inspections, the inspection procedures, and documentation and recordkeeping.
(vi) Conclusion	A summary of your technical evaluation showing that the alternative system provides an equivalent level of personnel protection for the specific hazards located on the facility.

8. On pages 52279 through 52280, the table spanning those two pages should read as follows:

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a . . .				Additional requirements
	API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
(1) Subsea Pipelines, Pipeline Risers, or Manifolds via an External Gas Lift Pipeline.	meet all of the requirements for the BSDV described in 250.835 and 250.836 on the gas-lift supply pipeline.	upstream (in board) of the GLSDV	pipeline upstream (in board) of the GLSDV	downstream (out board) of the PSHL and above the waterline. This valve does not have to be actuated.	(i) Ensure that the MAOP of a subsea gas lift supply pipeline is equal to the MAOP of the production pipeline. an actuated fail-safe close gas-lift isolation valve (GLIV) located at the point of intersection between the gas lift supply pipeline and the production pipeline, pipeline riser, or manifold. (ii) Install an actuated fail-safe close gas-lift isolation valve (GLIV) located at the point of intersection between the gas lift supply pipeline and the production pipeline, pipeline riser, or manifold. Install the GLIV downstream of the underwater safety valve(s) (USV) and/or AIV(s).

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a . . .				Additional requirements
	API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
(2) Subsea Well(s) through the Casing String via an External Gas Lift Pipeline.	Locate the GLSDV within 10 feet of the first of access to the gas-lift riser or topsides umbilical termination assembly (TUTA) (i.e., within 10 feet of the edge of the platform if the GLSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the GLSDV is in the vertical run of a riser, or within 10 feet of the TUTA if using an umbilical).	on the platform upstream (in board) of the GLSDV	pipeline on the platform downstream (out board) of the GLSDV.	downstream (out board) of the PSHL and above the waterline. This valve does not have to be actuated.	Install an actuated, fail-safe-closed GLIV on the gas lift supply pipeline near the wellhead to provide the dual function of containing annular pressure and shutting off the gas lift supply gas. If your subsea trees or tubing head is equipped with an annulus master valve (AMV) or an annulus wing valve (AWV), one of these may be designated as the GLIV. Consider installing the GLIV external to the subsea tree to facilitate repair and or replacement if necessary.
(3) Pipeline Risers via a Gas-Lift Line Contained within the Pipeline Riser	locate the GLSDV within 10 feet of the first of access to the gas-lift riser or TUTA (i.e., within 10 feet of the edge of the platform if the GLSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the GLSDV is in the vertical run of a riser, or within 10 feet of the TUTA if using an umbilical).	upstream (in board) of the GLSDV	flowline upstream (in board) of the FSV.	downstream (out board) of the GLSDV.	(i) Ensure that the gas-lift supply flowline from the gas-lift compressor to the GLSDV is pressure-rated for the MAOP of the pipeline riser. Ensure that any surface equipment associated with the gas-lift system is rated for the MAOP of the pipeline riser. (ii) Ensure that the gas-lift compressor discharge pressure never exceeds the MAOP of the pipeline riser. (iii) Suspend and seal the gas-lift flowline contained within the production riser in a flanged API Spec. 6A component such as an API Spec. 6A tubing head and tubing hanger or a component designed, constructed, tested, and installed to the requirements of API Spec. 6A. Ensure that all potential leak paths upstream or near the production riser BSDV on the platform provide the same level of safety and environmental protection as the production riser BSDV. In addition, ensure that this complete assembly is fire-rated for 30 minutes. Attach the GLSDV by flanged connection directly to the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser. To facilitate the repair or replacement of the GLSDV or production riser BSDV, you may install a manual isolation valve between the GLSDV and the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser, or outboard of the production riser BSDV and inboard of the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser.

9. On page 52280, the second table should read as follows:

Type of gas lift system	Valve	Allowable leakage rate	Testing frequency
(i) Gas Lifting a subsea pipeline, pipeline riser, or manifold via an external gas lift pipeline.	GLSDV	Zero leakage.	Monthly, not to exceed 6 weeks.

Type of gas lift system	Valve	Allowable leakage rate	Testing frequency
	GLIV	N/A	Function tested quarterly, not to exceed 120 days.
(ii) Gas Lifting a subsea well through the casing string via an external gas lift pipeline.	GLSDV	Zero leakage.	Monthly, not to exceed 6 weeks.
	GLIV	400 cc per minute of liquid or 15 scf per minute of gas.	Function tested quarterly, not to exceed 120 days.
(iii) Gas lifting the pipeline riser via a gas lift line contained within the pipeline riser.	GLSDV	Zero leakage.	Monthly, not to exceed 6 weeks.

10. On page 52281, the table should read as follows:

Valve	Allowable leakage rate	Testing frequency
(i) WISDV	Zero leakage	Monthly, not to exceed 6 weeks.
(ii) Surface-controlled SSSV or WIV	400 cc per minute of liquid or ..... 15 scf per minute of gas	Semiannually, not to exceed 6 calendar months.

11. On page 52282, the first table should read as follows:

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Not to exceed 6 months. Also test in place when first installed or reinstalled. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to API RP 14B (ISO 10417:2004) (incorporated by reference as specified in § 250.198) to ensure proper operation.
(ii) Subsurface-controlled SSSVs	Not to exceed 6 months for valves not installed in a landing nipple and 12 months for valves installed in a landing nipple. The valve must be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced.
(iii) Tubing plug	Not to exceed 6 months. Test by opening the well to possible flow. If a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the plug must be removed, repaired, and reinstalled, or replaced. An additional tubing plug may be installed in lieu of removal.
(iv) Injection valves	Not to exceed 6 months. Test by opening the well to possible flow. If a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the valve must be removed, repaired and reinstalled, or replaced.

12. On page 52282, the second table should read as follows:

Item name	Testing frequency and requirements
(i) PSVs	Once each 12 months, not to exceed 13 months between tests. Valve must either be bench-tested or equipped to permit testing with an external pressure source. Weighted disc vent valves used as PSVs on atmospheric tanks may be disassembled and inspected in lieu of function testing.
(ii) Automatic inlet SDVs that are actuated by a sensor on a vessel or compressor.	Once each calendar month, not to exceed 6 weeks between tests.
(iii) SDVs in liquid discharge lines and actuated by vessel low-level sensors.	Once each calendar month, not to exceed 6 weeks between tests.
(iv) SSVs	Once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API RP 14H (incorporated by reference as specified in § 250.198). If an SSV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.

Item name	Testing frequency and requirements
(v) FSVs	Once each calendar month, not to exceed 6 weeks between tests. All FSVs must be tested, including those installed on a host facility in lieu of being installed at a satellite well. You must test FSVs for leakage in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2 subsection D (incorporated by reference as specified in § 250.198). If leakage measured exceeds a liquid flow of 400 cubic centimeters per minute or a gas flow of 15 cubic feet per minute, the FSV must be repaired or replaced.

13. On page 52283, the first table should read as follows:

Item name	Testing frequency and requirements
(i) Pumps for firewater systems	Must be inspected and operated according to API RP 14G, Section 7.2 (incorporated by reference as specified in § 250.198).
(ii) Fire- (flame, heat, or smoke) detection systems.	Must be tested for operation and recalibrated every 3 months provided that testing can be performed in a non-destructive manner. Open flame or devices operating at temperatures that could ignite a methane-air mixture must not be used. All combustible gas-detection systems must be calibrated every 3 months.
(iii) ESD systems.	(A) Pneumatic based ESD systems must be tested for operation at least once each calendar month, not to exceed 6 weeks between tests. You must conduct the test by alternating ESD stations monthly to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. (B) Electronic based ESD systems must be tested for operation at least once every three calendar months, not to exceed 120 days between tests. The test must be conducted by alternating ESD stations to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. (C) Electronic/pneumatic based ESD systems must be tested for operation at least once every three calendar months, not to exceed 120 days between tests. The test must be conducted by alternating ESD stations to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation.
(iv) TSH devices	Must be tested for operation at least once every 12 months, excluding those addressed in paragraph (b)(3)(v) of this section and those that would be destroyed by testing. Those that could be destroyed by testing must be visually inspected and the circuit tested for operations at least once every 12 months.
(v) TSH shutdown controls installed on compressor installations that can be nondestructively tested.	Must be tested every 6 months and repaired or replaced as necessary.
(vi) Burner safety low	Must be tested at least once every 12 months.
(vii) Flow safety low devices	Must be tested at least once every 12 months.
(viii) Flame, spark, and detonation arrestors	Must be visually inspected at least once every 12 months.
(ix) Electronic pressure transmitters and level sensors: PSH and PSL; LSH and LSL.	Must be tested at least once every 3 months, but no more than 120 days elapse between tests.
(x) Pneumatic/electronic switch PSH and PSL; pneumatic/electronic switch/electric analog with mechanical linkage LSH and LSL controls.	Must be tested at least once each calendar month, but with no more than 6 weeks elapsed time between tests.

14. On page 52283, the second table should read as follows:

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Tested semiannually, not to exceed 6 months. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to API RP 14B (ISO 10417:2004) (incorporated by reference as specified in § 250.198) to ensure proper operation, or as approved in your DWOP.

Item name	Testing frequency, allowable leakage rates, and other requirements
(ii) USVs	Tested quarterly, not to exceed 120 days. If the device does not function properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the valve must be removed, repaired and reinstalled, or replaced.
(iii) BSDVs	Tested monthly, not to exceed 6 weeks. Valves must be tested for both operation and leakage. You must test according to API RP 14H for SSVs (incorporated by reference as specified in § 250.198). If a BSDV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
(iv) Electronic ESD logic	Tested monthly, not to exceed 6 weeks.
(v) Electronic ESD function	Tested quarterly, not to exceed 120 days. Shut-in at least one well during the ESD function test. If multiple wells are tied back to the same platform, a different well should be shut-in with each quarterly test.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket No. CDC–2013–0017; NIOSH–250]

Development of Inward Leakage Standards for Half-Mask Air-Purifying Particulate Respirators

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Request for comment and notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces a public meeting concerning inward leakage performance requirements for the class of NIOSH-certified non-powered air-purifying particulate respirators approved as half-facepiece respirators for protection from particulate-only hazards. The purpose of this meeting is to share information and to seek stakeholder feedback, in identified topic areas, concerning the development of inward leakage performance standards. Questions concerning the identified topics of specific interest are included in this document. Attendance at the public meeting is not required to submit written responses to the questions in this notice.

DATES: The public meeting will be held September 17, 2013, 1:00 p.m.–5:00 p.m. ET, or after the last public commenter has spoken. Stakeholder comments to the questions included in this document must be received by 11:59 p.m. ET on October 18, 2013.

ADDRESSES: *Meeting location:* Bruceton Research Center, NIOSH National Personal Protective Technology Laboratory (NPPTL), 626 Cochrans Mill Road, Building 140, Multi-purpose Room, Pittsburgh, PA 15236. This meeting will also be available by remote access.

Written Comments: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2013–0017; NIOSH–250). All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and submitted comments, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colleen Miller, NIOSH National Personal Protective Technology Laboratory (NPPTL), 626 Cochrans Mill Road, Pittsburgh, PA 15236 (412) 386–4956 or (412) 386–5200 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Testing, quality control, and other requirements under 42 CFR Part 84 are intended to ensure that respirators supplied to U.S. workers provide effective protection when properly employed within a complete respiratory protection program, as specified under MSHA and OSHA regulations. NIOSH requirements governing approval of half-mask air-purifying particulate respirators, those defined in this notice, are principally specified in Part 84, under Subpart K—Non-Powered Air-Purifying Particulate Respirators. The performance of the respirator's facepiece-to-face seal and other potential sources of inward leakage for this type of respirator are important to determine how much unfiltered contaminated air the worker might inhale. The facepiece-to-face seal leakage can be substantial in the case of a poorly fitting respirator. Effective fit testing technology and procedures exist to ensure that half-mask respirators approved by NIOSH under Subpart K of Part 84 have adequately performing facepiece-to-face seals. The purpose of this notice is to solicit stakeholder feedback regarding standards for inward leakage testing.

NIOSH believes that the employee is more likely to achieve a good fit from a respirator design that has been demonstrated to achieve a specified minimum level of performance during certification testing. Accordingly, NIOSH initiated rulemaking activities to establish inward leakage performance requirements for NIOSH-approved particulate filtering respirators by publishing a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 30, 2009 [74 FR 56141]. The public comment period for the rulemaking closed originally on December 28, 2009 but was subsequently extended upon request by stakeholders to September 30, 2010. Public meetings were held on December 3, 2009 and July 29, 2010 to allow stakeholders to share feedback on the proposed rule, including preliminary results of their independently completed or ongoing research. NIOSH reviewed all comments submitted by stakeholders and is considering them in the development of a revised inward leakage standard.

II. Test Panel History

Although NIOSH requires adequate facepiece-to-face seals for other types of respirators under Part 84, such requirements have not been applied to

the half-mask air-purifying particulate respirators approved under subpart K. A new test panel, based on the bivariate distribution of face width and face length, was developed by NIOSH in 2007, based on research completed in 2003.[1] The bivariate panel was developed following an anthropometric survey of 3,997 respirator users to better represent the U.S. civilian workforce by weighting subjects to match the age and race distribution of the U.S. population as determined from the 2000 census. In the rulemaking published in October 2009, NIOSH proposed to incorporate the bivariate panel into the standard testing procedures for inward leakage testing of these respirators.[2]

In response to stakeholder comments, specifically those addressing concerns about the potential for inter-panel variability when comparing panels comprising different test subjects, NIOSH researchers developed a peer-reviewed protocol to investigate the inter-panel variability. The study began in July 2012 and was recently completed. Data analysis is ongoing and public webinars to share preliminary results were held on July 23, 2013 and August 20, 2013.[3]

During the inter-panel variability study, potential issues with the implementation of the proposed performance requirement were carefully considered by NIOSH leadership, researchers, standard and policy developers, and the technical experts responsible for NIOSH certification testing. This **Federal Register** notice includes questions for stakeholders to better understand and resolve potential implementation issues.

III. Public Meeting

NIOSH will hold a public meeting on September 17, 2013 to discuss the development of inward leakage performance standards for the class of NIOSH-certified, non-powered half-facepiece respirators approved under the provisions of Subpart K of 42 CFR Part 84. The format of the meeting will be informal to encourage stakeholders to share information and responses regarding the information presented by NIOSH, the questions included in this notice, and any questions that may be identified during the meeting.

This meeting will also be using Audio/LiveMeeting Conferencing remote access capabilities so that interested parties may listen in and view the presentations simultaneously over the Internet. Parties remotely accessing the meeting will have the opportunity to comment during the open comment period.

Registration is required for both in-person and video conferencing participation. Because this meeting is being held at a Federal site, preregistration is required on or before September 10, 2013 and a government-issued photo ID will be required to obtain entrance to the facility. Non-U.S. citizens must register on or before August 30, 2013 to allow sufficient time for mandatory facility security clearance procedures to be completed. Non-U.S. citizens registered for another meeting at the site on September 17, 2013, will be considered to be registered for this meeting. NIOSH encourages all others to attend remotely.

An email confirming registration will be sent from NIOSH for both in-person participation and video conferencing participation. Information regarding participation via the video conferencing will be provided in a separate email. This option will be available to participants on a first come, first served basis.

Registration information is available on the NIOSH NPPTL Web site at *http://www.cdc.gov/niosh/npptl/resources/pressrel/letters/lttr-09172013.html*.

IV. Questions for Stakeholders

A. Inward Leakage Performance Standard Test Method

1. Which of the following test method(s) would you recommend including in the standard test procedure for an inward leakage performance standard test method: Condensation nuclei counter (CNC) with differential mobility analyzer with supplemental aerosol, as needed; or general aerosol in a chamber with a quantitative detection method? Please provide your rationale and information that supports your recommendation including experiences, data, analyses, studies, published articles, and standard professional practices.

2. In light of published data indicating that particle penetration through the filter media is negligible, in your opinion, if the CNC method is used:

(a) Is the differential analyzer needed? Explain why or why not, providing your rationale and any supporting data or information, including references or sources of technical expert opinion.

(b) What other detection method for ambient aerosol could be used? Provide any supporting documents, references, or data.

(c) Is corn oil an acceptable method for evaluating N-series respirators (those restricted to use in workplaces free of oil aerosols) for certification purposes? Why or why not? Are there issues associated with corn oil degradation of the media during the time required to complete a typical OSHA fit test protocol? Please explain your answer. Would your concerns regarding the effects of corn oil be eliminated if the number of exposures to corn oil (*i.e.,* repeated donnings) is limited? Please explain your answer.

(d) What additional information or issues should NIOSH consider regarding the use of corn oil as an aerosol challenge during performance testing for filtering facepiece respirators? Please include specific information that supports your recommendation including experiences, data, analyses, studies, published articles, and standard professional practices.

3. Should NIOSH allow the option of multiple inward leakage test methods?

4. Should NIOSH define and establish inward leakage standards for quarter-masks? If you represent a respirator manufacturer, do you currently market quarter-mask respirators? If you are a purchaser, do you currently use quarter-mask respirators? Please include a description of the occupational use of the quarter-mask respirators you are manufacturing or using.

B. Subject Test Panels

1. What are the advantages and/or disadvantages of using the NIOSH bivariate panel in assessing the facepiece-to-face seal as a regulatory requirement for respirators?

(a) What are key implementation issues you foresee and how do you recommend addressing these issues?

(b) Would you support the use of another panel, if so, which one (*e.g.,* Los Alamos National Laboratory (LANL) full-facepiece panel, LANL half-facepiece panel[4])? Please explain your answer.

2. Which panel(s) is your company currently using to develop new respirator models or to modify existing respirators? Please identify or define the panel (*e.g.,* LANL full-facepiece, LANL half-facepiece, NIOSH bivariate, or Principal Component Analysis (PCA)),

[1] Zhuang Z, Bradtmiller B, and Shaffer R.E. New Respirator Fit Test Panels Representing the Current U.S. Civilian Workforce. Journal of Occupational and Environmental Hygiene 2007;4:647–659.

[2] NIOSH. Total Inward Leakage Test for Half-mask Air-purifying Particulate Respirators. Procedure No. RCT–APR–STP–0068. Available at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-137/0137-081209-DraftTIL.pdf*.

[3] Presentation slides for both webinars are found in the dockets for this action.

[4] Use of the LANL panels is established in Procedure No. TEB–APR–STP–0005–05a–06, Determination of Qualitative Isoamyl Acetate (IAA) Facepiece Fit, Air-Purifying Respirators. Available at *http://www.cdc.gov/niosh/npptl/stps/pdfs/TEB-APR-STP-0005-05a-06.pdf*.

the number of test subjects generally used, the distribution of the subjects within the panel cells, the sizing basis, and the representation of male and female test subjects. What pass/fail criteria are you currently using to approve proto-types for further development or production?

(a) As a manufacturer, do you use facepiece-to-face seal criteria to qualify a design for production? Please include details about the criteria in your answer.

(b) As a purchaser, what are the attributes you use to determine which brand(s) or model(s) of respirators to buy (*e.g.,* price point, size, supplier, availability)?

3. Does your company use a panel or portion of a panel to develop respirators for a defined user group (*e.g.,* users with smaller facial features, users with larger facial features)? If so, please define the user group, the panel used, the cells included, and the number of subjects generally needed.

(a) Could the LANL half-facepiece panel be used to test respirators for defined user groups? Please explain why or why not and include related implementation issues.

(b) What issues do you foresee in the implementation of fit testing standards for defined user groups?

4. Does your company use a panel or a portion of a panel to ensure the quality of a manufactured product line? If so, what test method and panel are used? How many subjects are included? Please explain how you maintain your pool of subjects.

5. NIOSH currently uses the LANL half-facepiece panel (lip length, which is actually the lip width, and face length) for categorizing human subjects to evaluate those half-mask respirators evaluated for fit. What are the advantages and/or disadvantages of using the LANL half-facepiece panel for an inward leakage requirement for half-mask air-purifying particulate respirators, approved under subpart K, which are currently not evaluated for fit?

6. What panel size would be sufficient for conducting a facepiece-to-face seal certification test?

(a) Given the recommended number of test subjects, should the pass/fail criteria be specific and include a minimum of one pass per member cell? More than one per cell?

(b) Given the recommended number of test subjects, should the pass/fail criteria be panel based (*e.g.,* 20/25, 28/35) and not specific to panel cells?

(c) Should the pass/fail criteria require an overall high pass rate and allow for a percentage of failures or a lower fit factor pass criteria and a 100 percent pass rate?

C. Future Utility of the NIOSH Bivariate Panel for All NIOSH-Approved Respirators

1. Based on your experience with the NIOSH bivariate panel, what implementation issues must NIOSH consider in order to use the NIOSH bivariate panel for certification testing of all classes of respirators?

2. Should NIOSH develop a second NIOSH bivariate panel based on face length and lip length? Please explain why or why not and any implementation concerns or specific recommendations concerning future implementation of a new panel utilizing subject lip length and face length.

D. Inter-Panel Variability

1. What is an appropriate pass/fail criterion? Assuming the CNC is used, should the subject pass with a fit factor of 20? 50? 75? 100?

2. If a corn oil chamber is used, what inward leakage pass/fail criteria should be used?

3. What other strategies do you suggest to address the inter-panel variability? Please provide specific information that supports your recommendation including experiences, data, analyses, studies, published articles, and standard professional practices.

Dated: August 27, 2013.

Kathleen Sebelius,

Secretary.

[FR Doc. 2013–21430 Filed 9–3–13; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 315, 335, 410, 537, and 900

RIN 3206–AM77

Nondiscrimination Provisions

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to update various nondiscrimination provisions appearing in title 5, Code of Federal Regulations, to provide greater consistency and reflect current law.

DATES: Comments must be received on or before November 4, 2013.

ADDRESSES: Send or deliver comments to U.S. Office of Personnel Management, Office of Diversity & Inclusion, 1900 E Street NW., Washington, DC 20415; email to *diversityandinclusion@opm.gov;* or fax to (202) 606–6042. Comments may also be sent through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking. Please specify the section number for each comment.

FOR FURTHER INFORMATION CONTACT: Contact Sharon Wong by telephone at (202) 606–7140; by TTY at 1–800–877–8339; by fax at (202) 606–6042; or by email at *diversityandinclusion@opm.gov*.

SUPPLEMENTARY INFORMATION: Executive Order 13563 directs agencies to promote ''retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Pursuant to that direction and OPM's plan for conducting retrospective review (see *http://www.opm.gov/Open/Resources/RetrospectiveRegReview.pdf*), OPM has been reviewing a number of existing regulations to determine whether they should be changed or eliminated.

Among the regulations OPM has decided to review are those that contain nondiscrimination provisions. OPM chose these regulations for retrospective review to further respond to a separate instruction issued by President Obama in a June 17, 2009, Memorandum on Federal Benefits and Nondiscrimination. That memorandum directed OPM to issue guidance ''regarding compliance with, and implementation of, the civil service laws, rules, and regulations, including 5 U.S.C. 2302(b)(10), which make it unlawful to discriminate against Federal employees or applicants for Federal employment on the basis of factors not related to job performance.'' See *http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-federal-benefits-and-non-discri.*

Our review revealed that the nondiscrimination provisions are inconsistently worded and most have not been updated to reflect recent legal developments, including enactment of the Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. 110–233, which prohibits discrimination on the basis of genetic information. Accordingly, we are issuing these proposed regulations to update the nondiscrimination provisions to reflect current law and to

make them consistent, to the greatest extent possible.

Some of the nondiscrimination provisions reflect statutory prohibitions on discrimination that arise out of the civil service laws codified at title 5, United States Code, and OPM's authority to enforce the merit system principles. Others were promulgated to reflect the provisions of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, *et seq.*), the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), and the Age Discrimination in Employment Act of 1967, as amended (ADEA) (29 U.S.C. 621–634). As a result, we are adopting two formulations of the nondiscrimination language. For those grounded in Title VII of the Civil Rights Act, the Rehabilitation Act, the ADEA, and the GINA, the provisions will reflect the statutory prohibitions on discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information and retaliation for exercising rights under the statutes enumerated above, where retaliation rights are available. For those grounded in the civil service laws, the provisions will reflect the statutory prohibitions against discrimination on those bases (5 U.S.C. 2302(b)(1)(A)–(D)), as well as prohibitions against discrimination on the basis of marital status (5 U.S.C. 2302(b)(1)(E)); political affiliation (id.), and sexual orientation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit-based factor (E.O. 13087; E.O. 13152; 5 U.S.C. 2302(b)(10)); and retaliation for exercising rights under the statutes enumerated above, where retaliation rights are available. (5 U.S.C. 2302(b)(9)(A)–(B)).

Other provisions in our existing regulations are grounded in other specific legal authorities (such as our Federal Equal Opportunity Employment Program regulations at 5 CFR part 720 and our regulations implementing the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 at 5 CFR part 724). We have concluded that the nondiscrimination provisions currently appearing in those regulations appropriately reflect the scope of the laws that they are implementing.

We believe that having uniform nondiscrimination provisions, to the extent permitted by law, will clarify the protections afforded to individuals under law and negate any confusion that might be caused by seemingly conflicting provisions. Also, where appropriate, we are updating the authority citations for the regulations to reflect a complete list of the statutory provisions pursuant to which the regulations have been issued.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 300, 315, 335, 410, 537, and 900

Administrative practice and procedure, Equal employment opportunity, Government employees, Individuals with disabilities, Intergovernmental relations.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR chapter I, as follows:

PART 300—EMPLOYMENT (GENERAL)

■ 1. Revise the authority citation for part 300 to read as follows:

Authority: 5 U.S.C. 552, 2301, 2302, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803, E.O. 13087; and E.O. 13152.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c).

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

■ 2. Revise § 300.102(c) to read as follows:

§ 300.102 Policy.

* * * * *

(c) Be developed and used without discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information, marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available.

* * * * *

■ 3. Revise § 300.103(c) to read as follows:

§ 300.103 Basic requirements.

* * * * *

(c) *Equal employment opportunity.* An employment practice must not discriminate on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information, marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Employee selection procedures shall meet the standards established by the ''Uniform Guidelines on Employee Selection Procedures.''

■ 4. Revise § 300.104(c)(1) to read as follows:

§ 300.104 Appeals, grievances and complaints.

* * * * *

(c) *Complaints and grievances to an agency.* (1) A candidate may file a complaint with an agency when he or she believes that an employment practice that was applied to him or her and that is administered by the agency discriminates against him or her on the basis of race, color, religion, sex, national origin, or age (as defined by the Age Discrimination in Employment Act of 1967, as amended). The complaint must be filed and processed in accordance with the agency EEO or grievance procedures, as appropriate.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 5. Revise the authority citation for part 315 to read as follows:

Authority: 5 U.S.C. 1302, 2301, 2302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(c).

Sec. 315.611 also issued under 5 U.S.C. 3304(f).

Sec. 315.612 also issued under E.O. 13473.

Sec. 315.708 also issued under E.O.13318, 3 CFR, 2004 Comp. p. 265.

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 6. Revise § 315.806(d) to read as follows:

§ 315.806 Appeal rights to the Merit Systems Protection Board.

* * * * *

(d) An employee may appeal to the Board under this section a termination that the employee alleges was based on discrimination because of race, color, religion, sex, national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or disability. An appeal alleging a discriminatory termination may be filed under this subsection only if such discrimination is raised in addition to one of the issues stated in paragraph (b) or (c) of this section.

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 7. Revise the authority citation for part 335 to read as follows:

Authority: 5 U.S.C. 2301, 2302, 3301, 3302, 3330; E.O. 10577, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152, 3 CFR 1954–58 Comp., p. 218; 5 U.S.C. 3304(f), and Pub. L. 106–117.

■ 8. Revise § 335.103(b)(1) to read as follows:

§ 335.103 Agency promotion programs.

* * * * *

(b) *Merit promotion requirements*—(1) *Requirement 1.* Each agency must establish procedures for promoting employees that are based on merit and are available in writing to candidates. Agencies must list appropriate exceptions, including those required by law or regulation, as specified in paragraph (c) of this section. Actions under a promotion plan—whether identification, qualification, evaluation, or selection of candidates—must be made without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information, marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and must be based solely on job-related criteria.

* * * * *

PART 410—TRAINING

■ 9. Revise the authority citation for part 410 to read as follows:

Authority: 5 U.S.C. 1103(c), 2301, 2302, 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

■ 10. Revise § 410.302(a)(1) to read as follows:

§ 410.302 Responsibility of the head of an agency.

(a) *Specific responsibilities.* (1) The head of each agency must prescribe procedures as are necessary to ensure that the selection of employees for training is made without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information, marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and with proper regard for their privacy and constitutional rights as provided by merit system principles set forth in 5 U.S.C. 2301(b)(2).

* * * * *

PART 537—REPAYMENT OF STUDENT LOANS

■ 11. Revise the authority citation for part 537 to read as follows:

Authority: 5 U.S.C. 2301, 2302, and 5379(g); E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

■ 12. Revise § 537.105(d) to read as follows:

§ 537.105 Criteria for payment.

* * * * *

(d) *Selection.* When selecting employees (or job candidates) to receive student loan repayment benefits, agencies must ensure that benefits are awarded without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information, marital status, political affiliation, sexual orientation, labor affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available.

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

Subpart F—Standards for a Merit System of Personnel Administration

■ 13. Revise the authority citation for part 900, subpart F, to read as follows:

Authority: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR part 557 (1971–75 Compilation); 5 U.S.C. 2301, 2302, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

■ 14. Revise § 900.603(e) to read as follows:

§ 900.603 Standards for a merit system of personnel administration.

* * * * *

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information, marital status, political affiliation, sexual orientation, status as parent, labor organization affiliation or nonaffiliation in accordance with Chapter 71 of Title V, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and with proper regard for their privacy and constitutional rights as citizens. This ''fair treatment'' principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

* * * * *

[FR Doc. 2013–21486 Filed 9–3–13; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. FWS–R9–ES–2011–0080; FXES11120900000–134–FF09E30000]

RIN 1018–AX85; 0648–BB81

Interagency Cooperation—Endangered Species Act of 1973, as Amended; Incidental Take Statements

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services), propose to amend the regulations governing consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA), regarding incidental take statements. The purpose of the proposed changes is to address the use of surrogates to express the amount or extent of anticipated incidental take, and incidental take statements for programmatic actions where implementation of the program requires later authorization, funding, or implementation of site-specific actions that will be subject to section 7 consultation and incidental take statements, as appropriate. These changes are proposed to improve the flexibility and clarify the development of incidental take statements. The Services believe these proposed regulatory changes are a reasonable exercise of their discretion in interpreting particularly challenging aspects of section 7 of the ESA related to incidental take statements.

DATES: We will accept comments received or postmarked on or before November 4, 2013.

ADDRESSES: You may submit comments by one of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments for Docket No. FWS–R9–ES–2011–0080.

U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS–R9–ES–2011–0080; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us. 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 information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, this cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Rick Sayers, Chief, Division of Environmental Review, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (telephone: 703–358–2171); or Kristine Petersen, Chief (Acting), Endangered Species Act Interagency Cooperation Division, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce, Department of Commerce, Washington, DC (telephone: 301–427–8453).

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA prohibits the take of listed animal species with certain exceptions. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Section 7 of the ESA provides for the exemption of incidental take of listed animal species caused by, but not the purpose of, actions that the Services have found to be consistent with the provisions of section 7(a)(2).

Under those conditions, if a proposed action is anticipated to cause incidental take, the Services issue an incidental take statement under 50 CFR 402.14(i) with the biological opinion that specifies, among other requirements: the impact of such incidental taking on the listed species; measures considered necessary to minimize the impact of such take; requirements for the action agency or the applicant to monitor and report the progress of the action and its impact on the species to the Service as specified in the incidental take statement; and the procedures for handling or disposing of individuals that are taken.

The current regulations at § 402.14(i)(1)(i) require the Services to express the impact of such incidental taking of the species in terms of amount or extent. The preamble to the final rule that set forth the current regulations discusses the use of a precise number of individuals or a description of the land or marine area affected to express the amount or extent of anticipated take, respectively (51 FR 19954; June 3, 1986).

Court decisions rendered over the last decade regarding the adequacy of incidental take statements have prompted the Services to consider clarifying two aspects of incidental take statements: (1) The use of surrogates such as habitat, ecological conditions, or similar affected species, to express the amount or extent of anticipated incidental take, including circumstances where project impacts to the surrogate are coextensive with at least one aspect of the project's scope; and (2) incidental take statements for programmatic actions where implementation of the program requires later authorization, funding, or implementation of site-specific actions that will be subject to future section 7 consultation and incidental take statements, as appropriate. After careful consideration of the following and other court decisions, the Services are proposing to modify the ESA section 7 regulations to address those aspects of incidental take statements:

- *Arizona Cattle Growers' Association* v. *U.S. Fish and Wildlife Service,* 273 F.3d 1229 (9th Cir. 2001);
- *Natural Res. Def. Council, Inc.* v. *Evans,* 279 F. Supp. 2d 1129, 1184–85 (N.D. Cal. 2003);
- *Ctr. for Biological Diversity* v. *Bureau of Land Mgmt.,* 422 F. Supp. 2d 1115, 1137–38 (N.D. Cal. 2006);
- *Oregon Natural Resources Council* v. *Allen,* 476 F.3d 1031 (9th Cir. 2007);
- *Miccosukee Tribe of Indians of Florida* v. *U.S. Fish and Wildlife Service,* 566 F.3d 1257 (11th Cir. 2009);
- *Wild Fish Conservancy* v. *Salazar,* 628 F.3d 513 (9th Cir. 2010);
- *Center for Biological Diversity* v. *Salazar,* 695 F.3d 893 (9th Cir. 2012).

Through this action, the Services are proposing to establish prospective standards regarding incidental take statements. Nothing in these proposed regulations is intended to require, now or at such time as these proposed regulations become final, reevaluation of any previously completed biological opinions or incidental take statements.

Use of Surrogates

The Services acknowledge congressional preference for expressing the impacts of take in incidental take statements in terms of a numerical limitation with respect to individuals of

the listed species. However, Congress also recognized that a numerical value would not always be available and intended that such numbers only be established where possible (H.R. Rep. No. 97–567, at 27). The preamble to the final rule that set forth the current regulations also acknowledges that exact numerical limits on the amount of anticipated incidental take may be difficult to determine and the Services may instead specify the level of anticipated take in terms of the extent of the land or marine area that may be affected. In fact, as the Services explained in the preamble, the use of descriptions of extent of take can be more appropriate than the use of numerical amounts ''because for some species loss of habitat resulting in death or injury to individuals may be more deleterious than the direct loss of a certain number of individuals'' (51 FR 19954). Over the last 25 years of developing incidental take statements, the Services have found that in many cases the biology of the listed species or the nature of the proposed action makes it impractical to detect or monitor take of individuals. In those situations, evaluating impacts to a surrogate such as habitat, ecological conditions, or similar affected species may be the most reasonable and meaningful measure of assessing take of listed species.

The courts also have recognized that it is not always practicable to establish the precise number of individuals that will be taken and that ''surrogate'' measures are acceptable to establish the impact of take on the species if there is a link between the surrogate and take. *Arizona Cattle Growers' Association* v. *U.S. Fish and Wildlife Service,* 273 F.3d 1229 (9th Cir. 2001). It is often more practical and meaningful to monitor project effects upon surrogates, which can also provide a clear standard for determining when the amount or extent of anticipated take has been exceeded and consultation should be reinitiated. Accordingly, the Services have adopted the use of surrogates as part of our national policy for preparing incidental take statements:

''Take can be expressed also as a change in habitat characteristics affecting the species (e.g., for an aquatic species, changes in water temperature or chemistry, flows, or sediment loads) where data or information exists which links such changes to the take of the listed species. In some situations, the species itself or the effect on the species may be difficult to detect. However, some detectable measure of effect should be provided. . . . [I]f a sufficient causal link is demonstrated (i.e., the number of burrows affected or a quantitative loss of cover, food, water quality, or symbionts), then this can establish a measure of the impact on the species or its habitat and provide the yardstick for reinitiation.'' *Endangered Species Consultation Handbook,* U.S. Fish and Wildlife Service and National Marine Fisheries Service (March 1998; p. 4–47–48).

An example of when we might use a surrogate measure for take is timber harvest activities within habitat of the threatened northern spotted owl *(Strix occidentalis caurina).* Such activities can cause take by modifying habitat conditions that significantly disrupt the spotted owl's nesting, roosting, or foraging behavior. Although the number of spotted owls likely to be taken as a result of project effects to its habitat can be estimated, detection and monitoring of the affected owls to determine when take has occurred or when the amount or extent of anticipated take has been reached is not practical for two reasons. First, there is a low likelihood of finding an injured or dead spotted owl because their home ranges are large (about 3,000 acres on average) and there is a high rate of removal of injured or dead individuals by predators and scavengers. Second, the nature of the anticipated take impact to the spotted owl is primarily in the form of reduced fitness of adult owls, leading to reduced survival and reproduction in the future. Documenting this reduction is very difficult, and doing so may take months or years at considerable expense. Using habitat metrics to express the extent of take and to evaluate the impacts of take on the species is a practical alternative because effects to habitat: are causally related to take of spotted owls; can be readily monitored; and provide a clear standard for when the anticipated amount has been exceeded.

In some situations, the most practical surrogate for expressing the amount or extent of anticipated take of listed species is the amount of listed species' habitat impacted by the proposed action, and the expression of the habitat surrogate is fully coextensive with the project's impacts on the habitat. For example, under a proposed Clean Water Act permit issued by the Army Corps of Engineers, a quarter-acre of wetlands composed of three vernal pools occupied by the threatened vernal pool fairy shrimp (*Branchinecta lynchi*) would be filled to construct a road-crossing; no other habitat of the vernal pool fairy shrimp would be affected by this action. The wetland fill is likely to kill all of the shrimp occupying the three vernal pools. A single pool may contain thousands of individual shrimp as well as their eggs or cysts. For that reason, it is not practical to express the amount or extent of anticipated take of this species or monitor take-related impacts in terms of individual shrimp. Quantifying the area encompassing the three vernal pools supporting this species as a surrogate for incidental take would be a practical and meaningful alternative to quantifying and monitoring the anticipated incidental take in terms of individual shrimp caused by the proposed Federal permit action. In this case, the habitat surrogate for the amount or extent of anticipated take is coextensive with at least one aspect of the project's scope—the anticipated amount (i.e., a quarter of an acre) of vernal pool habitat to be affected by the project.

The Ninth Circuit Court's holding in *Oregon Natural Resources Council* v. *Allen,* 476 F.3d 1031 (9th Cir. 2007) could be read to suggest that such surrogates cannot be coextensive with the project's scope for fear that reinitiation of consultation would not be triggered until the project is complete. However, even under circumstances of a coextensive surrogate (such as in the above example), the incidental take statement will require the action agency to monitor project impacts to the surrogate during the course of the action, which will determine whether these impacts are consistent with the analysis in the biological opinion. This assessment will ensure a trigger for reinitiation of formal consultation if the amount or extent of the anticipated taking specified in the incidental take statement is exceeded during the course of the action where discretionary Federal involvement or control over the action has been retained or is authorized by law in accordance with § 402.16. In the above example, reinitiation of formal consultation would be triggered in the event a fourth vernal pool was discovered during wetland fill or it was determined that the total amount of vernal pool habitat modified by the project exceeded the identified one-quarter of an acre of wetland habitat. Thus, although fully coextensive with the *anticipated* impacts of the project on vernal pool fairy shrimp, the surrogate nevertheless provides for a meaningful reinitiation trigger consistent with the purpose of an incidental take statement.

We propose to amend § 402.14(i)(1)(i) of the regulations to clarify that surrogates may be used to express the amount or extent of anticipated take, provided the biological opinion or the incidental take statement: (1) Describes the causal link between the surrogate and take of the listed species; (2) describes why it is not practical to express the amount or extent of anticipated take or to monitor take-related impacts in terms of individuals of the listed species; and (3) sets a clear standard for determining when the

extent of taking has been exceeded. This amendment to the regulations would clarify the Services' discretion to use surrogates to express and monitor the amount or extent of anticipated take when they determine it is the most practical means to do so. Such flexibility may be especially useful in cases where the biology of the listed species or the nature of the proposed action makes it impractical to detect or monitor take-related impacts to individual animals.

We also propose to amend the regulations at § 402.14(i)(3) to clarify that monitoring project impacts to a surrogate meets the requirement for monitoring the impacts of take on the listed species.

Incidental Take Statements for Programmatic Actions

For purposes of this proposed rule, a programmatic action means an action, as defined at 50 CFR 402.02, that is designed to provide a framework for the development of future, site-specific Federal actions that are authorized, funded, or carried out at a later time. Such site-specific actions will be subject to separate section 7 consultation and incidental take statements, as appropriate. Examples of programmatic actions include land resource management plans established under the National Forest Management Act or the Federal Land Policy Management Act, broadly defined actions supported by programmatic Environmental Impact Statements and associated Records of Decision such as designations of certain geographic areas for a particular purpose (e.g., energy corridors), or promulgation of regulations that guide an agency's activities in general ways without authorizing specific projects. The key distinguishing characteristics of programmatic actions for purposes of this proposed rule are: (1) They provide the framework for future, site-specific actions which are subject to section 7 consultations and incidental take statements, but they do not authorize, fund, or carry out those future site-specific actions; and (2) they do not include sufficient site-specific information to inform an assessment of where, when, and how listed species are likely to be affected by the program. The Services are committed to coordinating with action agencies in deciding whether an action fits the definition of ''programmatic action.''

In biological opinions on programmatic actions where the Services concluded that the action is not likely to violate section 7(a)(2) and incidental take of listed species is anticipated, we have struggled with expressing the amount or extent of the anticipated take in an incidental take statement. The statutory and regulatory provisions for incidental take statements were clearly designed to address site-specific projects, not an over-arching program that is the precursor for those specific projects. The methodologies and rationale developed by the Services over many years of developing biological opinions and incidental take statements are based on a review of the impacts of a site-specific action on listed species and a determination as to whether those impacts conform to the statutory definition of take.

Addressing incidental take in the context of a programmatic action has recently become a subject of litigation. Courts have issued varied rulings on this issue of whether a biological opinion for a programmatic action can or should contain an incidental take statement. A California district court (*Ctr. for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2009 U.S. Dist. LEXIS 48376 (N.D. Cal., June 8, 2009) held that an incidental take statement should have been provided at the programmatic scale. *See also, Center for Biological Diversity* v. *Salazar,* 695 F.3d 893 (9th Cir. 2012); *NRDC* v. *Evans,* 279 F.Supp.2d 1129 (N.D. Cal. 2003) (each holding an incidental take statement should have been provided in the context of incidental take regulations under the Marine Mammal Protection Act). However, other courts have held that incidental take statements are not required in biological opinions addressing programmatic actions if site-specific actions under the program are subject to future consultation where an incidental take statement can be prepared, as appropriate. *Western Watersheds Project* v. *BLM,* 552 F.Supp.2d 1113 (D. Nev. 2008).

Because programmatic actions provide frameworks without details related to the where, when, and how future site-specific actions are likely to impact a listed species, attempts to identify a specific amount or extent of incidental take that is caused by a programmatic action absent that specificity would in most instances be speculative and unlikely to provide an accurate and reliable trigger for reinitiation of consultation. To address the issue of incidental take statements for programmatic actions, the Services are proposing to revise 50 CFR 402.14 and to promulgate new regulatory definitions of the terms ''programmatic action'' and ''programmatic incidental take statement'' in 50 CFR 402.02. These definitions are intended to distinguish the inherent differences between a programmatic action and a typical site-specific project relative to site-specific information (or the lack thereof) that provides details on where, when, and how listed species are likely to be impacted. The definitions are promulgated to respect the purpose of the ESA relative to providing incidental take statements in biological opinions, including those for programmatic actions.

The Services intend that a ''programmatic incidental take statement'' for a ''programmatic action'' will not include a specific amount or extent of anticipated take of listed species because programmatic actions do not include sufficient site-specific information to inform an assessment of where, when, and how listed species are likely to be affected by the program. Instead, the Services will, as appropriate, develop a programmatic incidental take statement that anticipates an unquantifiable amount or extent of take at the programmatic scale in recognition that subsequent site-specific actions authorized, funded, or carried out under the programmatic action will be subject to subsequent section 7 consultation and incidental take statements, as appropriate.

Another purpose of the ESA relative to providing incidental take statements in biological opinions is to establish a trigger for reinitiation of formal consultation during the course of the action when the amount or extent of anticipated take is exceeded. The implementing regulations for section 7 address this requirement at 50 CFR 402.16(a). Satisfying this requirement for programmatic actions that lack sufficient specificity to support quantification of an amount or extent of anticipated take is very challenging. To address the requirement for a reinitiation trigger when take is exceeded, the Services took an approach that reflects the inherent differences between a programmatic action and a typical site-specific project relative to site-specific information (or the lack thereof) that provides details on where, when, and how listed species are likely to be impacted.

Under the proposed regulatory definition of ''programmatic incidental take statement'' the reinitiation trigger at 402.16(a) may, as appropriate, be expressed as a reasonable and prudent measure(s) that adopts either specific provisions of the proposed programmatic action, such as spatial or timing restrictions, to limit the impacts of the program on listed species or similar types of restrictions identified by the Services that would function to minimize the impacts of anticipated take on listed species at the

programmatic level. In the event the action agency proposes a site-specific action under the programmatic action that is likely to cause take of a listed species but the site-specific action does not conform to the specified provisions of the incidental take statement for the programmatic action, reinitiation of consultation on the programmatic action would be triggered.

The Services would have substantial flexibility to adopt these programmatic reinitiation triggers as reasonable and prudent measures to address the particular circumstances of the programmatic action under consultation and the manner in which the action agency is expected to carry out later site-specific actions. For example, if a proposed forest plan includes 100-foot wide riparian buffers for timber harvest actions along streams occupied by listed fish, the incidental take statement for the plan-level biological opinion could adopt the riparian buffer as a reasonable and prudent measure and identify encroachments on the 100-foot wide riparian buffer as a reinitiation trigger for exceeding anticipated take. If a subsequent, site-specific timber harvest action developed under the programmatic action adopted more narrow riparian buffers, reinitiation of formal consultation on the programmatic action would be triggered because the take exemption provided by the programmatic incidental take statement is likely to be exceeded.

Similarly, the Services could include a reasonable and prudent measure under a programmatic incidental take statement that requires the action agency to engage in section 7(a)(2) consultation for site-specific actions that are anticipated to cause take of listed species under the programmatic action. Such a reasonable and prudent measure would be appropriate for three reasons. First, although the action agency's duty to consult already exists under the statute, imposing the requirement as a reasonable and prudent measure would require site-specific consultation in order to maintain the exemption of incidental take at the programmatic level. Second, many biological opinions for programmatic actions rely on the second look afforded by site-specific consultation to support a no-jeopardy conclusion. An action agency's failure to consult at the site-specific level would undermine that conclusion. Third, with adequate procedures for notice to the action agency provided as terms and conditions, a reinitiation trigger for a failure to consult on a site-specific project would serve as a clear standard for when reinitiation was required under the programmatic incidental take statement.

The Services also anticipate that specific provisions or restrictions proposed under a programmatic action may, in some circumstances, be included or augmented as reasonable and prudent measures in the programmatic incidental take statement, as appropriate, to minimize the impacts of anticipated take of listed species. Monitoring requirements at the programmatic action scale would also be included as a reasonable and prudent measure in the incidental take statement for a programmatic action pursuant to the requirements of 50 CFR 402.14(i)(3).

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is significant and has reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the proposed rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the proposed rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the proposed rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the proposed rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

Incidental take statements describe the amount or extent of incidental take that is anticipated to occur when a Federal action is implemented. The incidental take statement conveys an exemption from the ESA's take prohibitions provided that the action agency (and any applicant) complies with the terms and conditions of the incidental take statement. Terms and conditions cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes (50 CFR 402.14(i)(2)). The changes embodied by this proposed regulation will neither expand nor contract the reach of terms and conditions of an incidental take statement. As such, we foresee no economic effects from implementation of this proposed rule.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) If adopted, this proposal will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed regulation will not place additional requirements on any city, county, or other local municipalities.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed regulation would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, we have determined that the proposed rule does not have significant takings implications.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property

and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

This proposed rule will not unduly burden the judicial system and meets the applicable standards provided in sections s (3)(a) and (3)(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with affected recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands affected by this rule and therefore, no such communications were made.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new information collections that require approval. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are analyzing these proposed regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8)), and National Oceanographic and Atmospheric Administration (NOAA) Administrative Order 216–6. Our analysis includes evaluating whether the action is procedural, administrative, or legal in nature, and therefore a categorical exclusion applies. We invite the public to comment on whether, and if so, how this proposed regulation may have a significant effect upon the human environment, including any effects identified as extraordinary circumstances at 43 CFR 46.215. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

We are required by E.O. 12866, E.O. 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 comment should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful. The Services would particularly welcome any comments that address whether it would be more appropriate to not provide programmatic incidental take statements and instead defer the exemption of incidental take for programmatic actions, as appropriate, until subsequent site-specific actions that would provide site-specific information regarding where, when, and how listed species are likely to be incidentally taken. Comments on this topic would be most helpful if they specifically address how such an approach is consistent with the Act and how such an approach could be reconciled with existing caselaw and agency practices.

Authority

We are taking this action under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 402

Endangered and threatened wildlife, Fish, Intergovernmental relations, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, we propose to amend part 402, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—[AMENDED]

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

■ 2. Amend § 402.02 by adding definitions of ''Programmatic action'' and ''Programmatic incidental take statement'' in alphabetical order to read as follows:

§ 402.02 Definitions.

* * * * *

Programmatic action means, for purposes of an incidental take statement, an action that provides a framework for the development of future, site-specific actions occurring in the action area of the programmatic action, that are authorized, funded, or implemented at a later time and subject to section 7 consultation requirements, as appropriate, and for which site-specific information regarding where, when, and how listed species will be affected will become available at the time of a subsequent section 7 consultation.

Programmatic incidental take statement means an incidental take statement prepared in those cases where the Services conclude in a biological

opinion that a programmatic action will not violate section 7(a)(2) of the Act and where incidental take of listed species is reasonably certain to occur but where the amount or extent of anticipated take cannot be quantified because site-specific information regarding where, when and how listed species will be taken is not yet available.

* * * * *

■ 3. Amend § 402.14 by revising paragraphs (i)(1)(i) and (i)(3), and by adding paragraph (i)(6) to read as follows:

§ 402.14 Formal consultation.

* * * * *

(i) * * *

(1) * * *

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species. A surrogate (e.g., habitat or ecological conditions or similarly affected species) may be used to express the amount or extent of anticipated take provided that the incidental take statement describes the causal link between effects to the surrogate and take of the listed species, why it is not practical to express the amount or extent of anticipated take or to monitor take-related impacts in terms of individuals of the listed species, and sets a clear standard for determining when the level of anticipated take has been exceeded;

* * * * *

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. When the Services use a surrogate to express the amount or extent of take, the Federal agency or applicant must monitor the surrogate to ensure that the action does not exceed the anticipated amount or extent of take.

* * * * *

(6) A programmatic incidental take statement will be provided in a biological opinion for a programmatic action that is anticipated to cause incidental take. In such circumstances, the programmatic incidental take statement will include specific provisions as reasonable and prudent measures under paragraph (i)(1) of this section to minimize the impacts of take caused by the programmatic action and to serve as a trigger to reinitiate formal consultation on the programmatic action.

* * * * *

Dated: August 6, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: August 21, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs.

[FR Doc. 2013–21423 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–22–P; 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BD40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures

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

ACTION: Availability of proposed fishery management plan amendments; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council has submitted the Recreational Accountability Measures Omnibus Amendment incorporating a draft Environmental Assessment, for review by the Secretary of Commerce. NMFS is requesting comments from the public on the Recreational Accountability Measures Omnibus Amendment, which was developed by the Council to modify the accountability measures for the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass recreational fisheries.

DATES: Public comments must be received on or before November 4, 2013.

ADDRESSES: A draft environmental assessment (EA) was prepared for the Recreational Accountability Measures (AM) Omnibus Amendment that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Recreational AM Omnibus Amendment, including the draft EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council (Council), 800 North State Street, Suite 201, Dover, DE 19901. This document is also available online at *http://www.mafmc.org*.

You may submit comments on this document, identified NOAA–NMFS–2013–0108, 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-2013-0108,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* (978) 281–9135, Attn: Comments on Recreational Omnibus Amendment, NOAA–NMFS–2013–0108.
- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Recreational Omnibus Amendment.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 2011, the Council adopted, and NMFS implemented, an Omnibus Annual Catch Limit (ACL) and AM Amendment to establish AMs for the commercial and recreational fisheries that catch Atlantic mackerel, butterfish, Atlantic bluefish, summer flounder, scup, black sea bass, golden tilefish, ocean quahog, and Atlantic surfclams. The AMs for the recreational fisheries included in-season closure authority for the Regional Administrator when landings were known to have reached the recreational harvest limit (RHL) and pound-for-pound payback of any overage. In 2012, the recreational black

sea bass fishery significantly exceeded its RHL. The pound-for-pound payback requirement would drastically limit the recreational black sea bass fishery in fishing year 2014. As a result, the Council decided to review the recreational fishery AMs to determine if a different approach to recreational accountability would be more appropriate. Specifically, the Council wanted to develop AMs that took into account the status of the stock and the biological consequences, if any, resulting from a recreational sector overage.

Proposed Measures

The Recreational AM Omnibus Amendment proposes measures intended to respond to concerns that in-season closure and a pound-for-pound payback are not the most effective AMs for the recreational fisheries. First, the Council considered modifying the annual catch target (ACT) process to more formally consider incorporating uncertainty in recreational catch estimates; however, the Amendment proposes to maintain the existing ACT process. Second, the Amendment proposes to remove the in-season closure authority for recreational fisheries. Third, the Amendment proposes to use the 3-year moving average of the lower bound of the confidence interval of the recreational catch estimate to determine if an ACL has been exceeded. Fourth, measures are proposed that would result in a payback if (1) the stock is overfished (i.e., the most recent estimate of biomass (B) is below the threshold, or $B/B_{MSY} < ½$), or under a rebuilding plan and the ACL was exceeded, or (2) if biomass is below the target, but above the threshold (i.e., $½ < B/B_{MSY} < 1$) and the acceptable biological catch (ABC) is exceeded. Otherwise, adjustments to the management measures would be used as an AM. In addition, measures are being proposed that would scale the amount of any payback to the stock status. The scale would work such that for stocks that are below the biomass threshold or under a rebuilding plan, payback would be equal to the full amount of the overage; for stocks that are above the biomass target, there would be no payback, regardless of the size of the overage. Stocks for which the biomass is in between the threshold and the target would have a payback amount equal to the product of the difference between recreational catch and the ACL and the payback coefficient. The payback coefficient would be equal to the difference between the biomass estimate and the target divided by one-half the biomass target. Finally, the Council considered reevaluating the catch limits after the fact to determine if, based on updated information, those catch limits were still appropriate. However, the Council determined that the necessary information and resources to support that type of reevaluation does not currently exist.

Public comments on the Recreational AM Omnibus Amendment and its incorporated documents may be submitted through the end of the comment period stated in this notice of availability. A proposed rule to implement the Recreational AM Omnibus Amendment will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of the Recreational AM Omnibus Amendment to be considered in the approval/disapproval decision on the amendment. All comments received by November 4, 2013, whether specifically directed to the Recreational AM Omnibus Amendment or the proposed rule for the Recreational AM Omnibus Amendment, will be considered in the approval/disapproval decision on the Recreational AM Omnibus Amendment. Comments received after that date will not be considered in the decision to approve or disapprove the Recreational AM Omnibus Amendment. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: August 29, 2013.

Kelly Denit,

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

[FR Doc. 2013–21479 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 171

Wednesday, September 4, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, September 18, 2013.

Time: 2:30 p.m. to 4:00 p.m.

Location: Horizon Room, Ronald Reagan Building, 1300 Pennsylvania Ave NW., Washington, DC 20523.

Agenda

USAID Administrator Rajiv Shah will make opening remarks, followed by the release of working group recommendations on the creation of a Feed the Future Civil Society Action Plan, and an opportunity for public comment. A draft agenda will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

Stakeholders

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee/get-involved.*

FOR FURTHER INFORMATION CONTACT: Sandy Stonesifer, 202–712–4372.

Dated: August 27, 2013.

Sandy Stonesifer,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 2013–21451 Filed 9–3–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 28, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 4, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Mangoes from the Philippines

OMB Control Number: 0579–0172

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7711–7714), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not know to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) regulations on fruits and vegetables allow the importation of mangoes from Guimaras Island in the Republic of the Philippines into the United States under certain conditions. The regulations require the use of box marking to indicate the origin of the fruit, phytosanitary certificate to confirmed that the fruit has been grown and treated in accordance with the regulations and a trust fund agreement between the Republic of the Philippines Department of Agriculture and APHIS to cover the Agency's participation in the treatment and inspection activities in the Philippines that are required for the importation of mangoes.

Need and Use of the Information: APHIS will collect information from a variety of individuals who are involved in growing, packing, handling, transporting and exporting plants and plant products. The information APHIS collects serves as the supporting documentation for issuing PPQ forms and documents required to authorize release of restricted products, and allow movement of regulated products. The information APHIS collects is vital to helping ensure that injurious plant diseases and insect pest are not imported and do not spread into or within the United States.

Description of Respondents: Business or other for-profit; farms; Federal Government

Number of Respondents: 1,827

Frequency of Responses: Reporting: On occasion

Total Burden Hours: 121

Animal and Plant Health Inspection Service

Title: Importation of Artificially Dwarfed Plants

OMB Control Number: 0579–0176

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the

importation, entry or movement of plants and plant pests, to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Plant Protection and Quarantine, a program within USDA's Animal and Plant Health Inspection Service (APHIS), enforce these regulations. APHIS requires artificially dwarfed plants that are imported into the United States to have been grown under certain conditions in greenhouses or screen houses within nurseries registered with the government of the country where the plants were grown.

Need and Use of the Information: APHIS will collect information from the phytosanitary certificate to state that the plants were: (1) Grown for at least 2 years in a nursery that is registered with the government of the country of export; (2) grown in pots containing only sterile growing media; (3) grown on benches at least 50 cm above the ground; and (4) inspected (along with the nursery itself) at least once each year by the plant protection service of the country of export. The collected information will enable PPQ to verify that the imported plants were grown under conditions that helped keep the plants free from infestation by certain longhorned beetles and other pests. APHIS also uses the information on this certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. Without the information, all shipment would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Business or other for-profit; Federal Government

Number of Respondents: 30

Frequency of Responses: Reporting; On occasion

Total Burden Hours: 38

Animal and Plant Health Inspection Service

Title: Importation of Plants for Planting

OMB Control Number: 0579–0279

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) regulations contained in ''Subpart-Plants for Planting,'' §§ 319.37 through 319.37–14 (referred to as the regulations), restricts among other things, the importation of living plants, plant parts, and seeds for propagation.

Need and Use of the Information: APHIS requires that some plants or plant products be accompanied by either a phytosanitary inspection certificates with additional declaration statements, grower registration and agreements, and production site registration for the export program. APHIS uses the information on these certificates to determine the pest condition of the shipment at the time of inspection in the foreign country. This information is used as a guide to the intensity of the inspection that APHIS must conduct when the shipment arrives. Without this information, APHIS could not verify that the imported plants for planting do not present a significant risk of introducing plant pests into the United States.

Description of Respondents: Business or other for-profit; Federal government

Number of Respondents: 60

Frequency of Responses: Reporting: On occasion

Total Burden Hours: 559

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–21448 Filed 9–3–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. APHIS–2012–0104]

Privacy Act Systems of Records; Phytosanitary Certificate Issuance and Tracking System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a proposed new system of records; withdrawal.

SUMMARY: We are withdrawing a Privacy Act System of Records notice published on August 9, 2013, (78 FR 48642–48644). The system of records was the Phytosanitary Certificate Issuance and Tracking System, USDA–APHIS–13. The August 9, 2013, notice was a duplicate notice published in error; in this document, we are withdrawing the August 9, 2013, notice from publication.

DATES: Effective September 4, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Christian B. Dellis, Export Services, Plant Health Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851–2154.

SUPPLEMENTARY INFORMATION: On August 9, 2013, we published a notice in the **Federal Register** (79 FR 48642–48644, Docket No. APHIS–2012–0104) of a proposed new system of records to be added to our inventory of records systems subject to the Privacy Act of 1974, as amended. The system of records that was the subject of the notice was the Phytosanitary Certificate Issuance and Tracking System, USDA–APHIS–13. We published this notice in error, as we had previously published the same notice [1] on June 24, 2013 (78 FR 37775–37777). We received no comments during the comment period for the June 2013 notice, and the system was adopted on August 5, 2013. Therefore, in this document, we are withdrawing the August 9, 2013, notice from publication.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2013–21449 Filed 9–3–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet by video-teleconference in Wrangell, Alaska and Petersburg, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review progress of previously funded projects and, if the Act is reauthorized, to review project proposals and make recommendations for allocation of anticipated Title II funding to projects.

DATES: The meeting will be held on Saturday, September 28, 2013 from 8 a.m. to 12 p.m., or until business is concluded.

ADDRESSES: The meeting will be held at the Wrangell Ranger District office at 525 Bennett Street in Wrangell, Alaska,

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0104.*

and the Petersburg Ranger District office at 12 North Nordic Drive in Petersburg, Alaska. Interested persons may attend in person at either location, or by telephone. A toll free teleconference number for those who wish to call in will be provided on request. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.**

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Jason Anderson, District Ranger, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833, phone (907) 772–3871, email *jasonanderson@fs.fed.us*, or Robert Dalrymple, District Ranger, Wrangell Ranger District, P.O. Box 51, Wrangell, Alaska 99929, phone (907) 874–2323, email *rdalrymple@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: More information on the RAC, including a full agenda, can be found online at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Wrangell-Petersburg?OpenDocument.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. A one-hour public input session will be provided beginning at 10:00 a.m. on September 28th. Individuals wishing to make an oral statement should request in writing by September 23rd to be scheduled on the agenda.

Written comments and requests for time for oral comments should be sent to Jason Anderson, District Ranger, Petersburg Ranger District, P.O. Box 1328, Petersburg, AK 99833; or Robert Dalrymple, District Ranger, Wrangell Ranger District, P.O. Box 51, Wrangell, AK 99929. Comments may also be sent via email to *jasonanderson@fs.fed.us,* or via facsimile to 907–772–5995. A summary of the meeting(s) will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Wrangell-Petersburg?OpenDocument* within 21 days of the meeting.

Dated: August 26, 2013.

Jason C. Anderson,

District Ranger.

[FR Doc. 2013–21443 Filed 9–3–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 130730666–3666–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice of proposed amendment to Privacy Act System of Records: ''COMMERCE/DEPARTMENT–20, Biographical Files''

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Commerce proposes to amend the system of records entitled ''COMMERCE/DEPARTMENT–20, Biographical Files,'' to include social network sites, which will provide Department of Commerce employees new ways to connect and share information, and solicit and receive feedback freely with the public; change the name of the system of records to ''Biographical Files and Social Networks''; update routine uses; update practices for electronically storing, retrieving, and safeguarding records in the System; and generally update the system's notice. We invite public comment on the amended system announced in this publication.

DATES: To be considered, written comments must be submitted on or before October 4, 2013. Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register.**

ADDRESSES: Comments may be mailed to Lanetta Gray, U.S. Department of Commerce, Office of the General Counsel, Room 5875 HCHB, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lanetta Gray, Executive Officer, Office of the General Counsel, 202–482–4683.

SUPPLEMENTARY INFORMATION:

The purpose of this amendment is to add social networking to the system of records. Internal social networking through collaborative software will allow Department of Commerce employees to interact with one another by providing new ways to connect and share information. The collected information will be used to enable collaboration, referrals, referencing, and networking among employees utilizing the system. External social networking will allow the Department of Commerce to interact with the public using third party or commercial social media applications. These applications facilitate the sharing of information and ideas between the Department of Commerce and the public. While the Department of Commerce may use social media applications to connect with the public in an official capacity, information provided by an individual to register with the third party site is rarely shared with the Department. Information collected and stored by the social media applications is subject to the third party privacy policies posted on their Web sites. The Department of Commerce may receive contact information from the third party site for individuals who wish to have further contact with the Department for additional communications such as dissemination of information for an upcoming event, to notify the public of an emergency or breaking news, or to solicit feedback about a program. The Department may also receive user names or emails for individuals who have commented or submitted information on a Department of Commerce section on a social media Web site. The Department may also receive information indirectly from social media site as part of specific programs or initiatives. The Department may use social media applications to share information with the public, to collect ideas and comments submitted by the public, and to promote participation and collaboration with the public. If the Department is requesting feedback from the public through the use of a social media site, an alternative Department of Commerce email address will also be provided so that the public may interact with the Department without having to use the social media site. When an individual submits an email directly to the Department, the Department will maintain the individual's email, and any other personal information provided in their email, in accordance with applicable records retention policy. All interactions by the public are voluntary.

COMMERCE/DEPARTMENT–20

SYSTEM NAME:

COMMERCE/DEPARTMENT–20, Biographical Files and Social Networks

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

a. For Secretarial Officers and senior-level officials, and employees of the Office of the Secretary: Office of Public Affairs, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

b. For Secretarial Officers and senior-level officials included in Biographical Resumes of Key Officials and social media: Office of Human Resources Management, and Chief Financial Officer for Administration and Assistant Secretary for Administration; all Office of the Secretary, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

c. For U.S. Census Bureau, Office of Public Affairs, 4600 Silver Hill Road, Suitland, MD

d. For Bureau of Economic Analysis/Economic Statistics Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

e. For Economic Development Administration, Office of Public Affairs, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

f. For Bureau of Industry and Security, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

g. For employees of International Trade Administration: Office of Public Affairs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 3416, Washington, DC 20230.

h. For members of advisory committees within International Trade Administration: Office of Advisory Committee, Manufacturing and Services, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4036, Washington, DC 20230.

i. For Minority Business Development Agency, Office of Public Affairs, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

j. For senior management and select employees of National Institute of Standards and Technology (Gaithersburg and Boulder): Public and Business Affairs Office, National Institute of Standards and Technology, Administration Building, 100 Bureau Drive, Gaithersburg, MD 20899.

k. For National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312.

l. For National Telecommunications and Information Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

m. For employees of National Oceanic and Atmospheric Administration: NOAA headquarters locations: Office of Communications & External Affairs, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room A100, Washington, DC 20230, and/or NOAA field offices, the principal addresses of which are:

NOAA, National Marine Fisheries Service, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

NOAA, National Ocean Service, 1305 East-West Highway, SSMC4, Silver Spring, MD 20910.

NOAA, National Weather Service, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910.

NOAA, Office of Oceanic and Atmospheric Research, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

NOAA, Office of Oceanic and Atmospheric Research, Earth System Research Laboratory, David Skaggs Research Center, 325 Broadway, Boulder, CO 80305–3337.

n. For U.S. Patent and Trademark Office, 600 Dulany Street, Madison Building, Alexandria, VA 22314.

o. For Office of Inspector General, Office of Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

p. Social media outreach, and internal collaborative network records contained in these systems of records are maintained by the Bureau or Office conducting the social media outreach.

1. For Office of the Secretary, 1401 Constitution Avenue NW., Washington, DC 20230.

2. For U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20746.

3. For Bureau of Economic Analysis/Economic Statistics Administration, 1401 Constitution Avenue NW., Washington, DC 20230.

4. For Economic Development Administration, 1401 Constitution Avenue NW., Washington, DC 20230.

5. For Bureau of Industry and Security, 1401 Constitution Avenue NW., Washington, DC 20230.

6. For International Trade Administration, 1401 Constitution Avenue NW., Washington, DC 20230.

7. For Minority Business Development Agency, Office of the Secretary, 1401 Constitution Avenue NW., Washington, DC 20230.

8. For National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

9. For National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312.

10. For National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Washington, DC 20230.

11. For National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC3, Silver Spring, MD 20910.

12. For U.S. Patent and Trademark Office, 600 Dulany Street, Madison Building, Alexandria, VA 22314.

13. For Office of Inspector General, 1401 Constitution Avenue NW., Washington, DC 20230.

Social media sites may retain separate records from the Department.

The information in this system may be duplicated in other Privacy Act systems of the Commerce Department, in the systems maintained by the Office of Personnel Management, or in the immediate office of the individual to whom the biographical record pertains. For assistance in this regard, contact the Director, Office of Human Resources Management, U.S. Department of Commerce, Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Department personnel, and members of advisory committees. Individuals who interact with the Department of Commerce through various social media outlets, who submit feedback to the Department of Commerce, who correspond with the Department as a result of the Department's outreach using social networks, or who wish to be contacted by the Department as part of an outreach effort.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information which may include, but is not limited to: Date and place of birth; education; military service; present position; employment history; field of research; publications; inventions and patents; awards and honor; memberships and business or volunteer affiliations; present and past residences; telephone numbers; email; names; ages; and addresses of family members; hobbies and outside interest; photograph of individual; username; home address; work address; security questions, IP addresses, passwords, contact information, financial data, and

input and feedback from the public, such as but not limited to comments, videos, and images, which may include tags, geotags or geographical metadata.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. App.—Inspector General Act of 1978, section 2; 5 U.S.C. App.—Reorganization Plan of 1970, section 2; 13 U.S.C. section 2; 13 U.S.C. section 131; 15 U.S.C. section 272; 15 U.S.C. section 1151; 15 U.S.C. section 1501; 15 U.S.C. section 1512; 15 U.S.C. section 1516; 15 U.S.C. section 3704b; 16 U.S.C. section 1431; 35 U.S.C. section 2; 42 U.S.C. section 3121 *et seq.;* 44 U.S.C. 3101 and Reorganization Plan No. 5 of 1950; 47 U.S.C. section 902; 50 U.S.C. App. section 2401 *et seq.;* E.O. 11625; 77 FR 49699; Presidential Memorandum to the Heads of Executive Departments and Agencies on Transparency and Open Government, January 21, 2009; OMB Open Government Directive, M–10–06, December 8, 2009; OMB Guidance for Online Use of Web Measurement and Customization Technologies, M–10–22, June 25, 2010, OMB Guidance for Agency Use of Third-Party Web sites and Applications, M–10–23, June 25, 2010.

PURPOSE(S):

The purpose of this system is to allow for collection of biographical information for present and former Department personnel, and members of advisory committees; and to allow Department of Commerce employees to interact with one another on internal Department networking platforms that allow them to share biographical and/or personal information and to allow the Department of Commerce to interact with the public and provide additional transparency to the public through the use of social media. Registration information, username, comments, and suggestions made by the public on third party social networks where the Department has an official presence may be collected by third party social networks for registration or use of social media sites. Information and comments provided may be shared with the Department of Commerce to facilitate interaction with the public, to disseminate information regarding an upcoming event, to notify the public of an emergency or breaking news, or solicit feedback about Department programs. The Department of Commerce may also receive information directly from individuals who provide feedback from social media outreach using alternate methods, such as an email directly to the Department, a form on a Department of Commerce Web page, or comments on a Department of Commerce blog.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed as follows:

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed to a Federal, state, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record from this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act 5 U.S.C. 552.

7. A record from this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

8. A record from this system of records may be disclosed to the National Archives and Records Administration or to the Administrator, General Services, or his designee during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e. GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

9. A record in this system of records may be disclosed, as a routine use, to appropriate agencies, entities, and persons when (1) It is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

10. A record in this system of records may be disclosed to the news media, other government agencies, and the general public for use in connection with written articles, oral interviews, speaking engagements, retirement and obituary notices, and other purposes of public information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

11. A record in this system of records that was collected on a Department internal collaborative network may be shared with other Department employees on the platform for networking and collaboration purposes, consistent with the terms of use of any such networking platform.

POLICIES AND PRACTICED FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are contained in file folders stored in file cabinets; electronic records are contained in removable drives, computers, email and electronic databases.

RETRIEVABILITY:

Paper records may be retrieved alphabetically by name or by position or work unit. Electronic records may be retrieved by full-text search, name, image, video, email address, user name, or date received.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable security rules and policies. Paper records are kept in locked cabinets in secure facilities and access to them is restricted to individuals whose official duties require access. Access to the servers containing the records in this system is limited to personnel who have the need to know the information for the performance of their official duties. The computer servers in which records are stored are located in facilities with access codes, security codes, and security guards. Access to networks and data requires a valid username and password.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with records schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Use the same address as listed in System Location section above.

For records at location a: Director, Office of Public Affairs.

For records at location b: Director, Office of Human Resources Management.

For records at location c: Director, U.S. Census Bureau.

For records at location d: Director, Office of Public Affairs, Bureau of Economic Analysis/Economic Statistics Administration.

For records at location e: Director, Office of Public Affairs, Economic Development Administration.

For records at location f: Director, Office of Public Affairs, Bureau of Industry and Security.

For records at location g: Director, Office of Public Affairs, International Trade Administration.

For records at location h: Director, Office of Advisory Committees, International Trade Administration.

For records at location i: Director, Office of Public Affairs, Minority Business Development Agency.

For records at location j: Director, Office of Public and Business Affairs, National Institute of Standards and Technology.

For records at location k: Director, Office of Public Affairs, National Technical Information Service.

For records at location l: Office of the Chief Information Officer, National Telecommunications and Information Administration.

For records at location m: Director, Office of Public Affairs, National Oceanic and Atmospheric Administration.

For records at location n: Director, Office of Public Affairs, U.S. Patent and Trademark Office.

For records at location o: Director of Human Resources Management, Office of Administration, Office of Inspector General.

For records at location p: use addresses listed 1–13 in the System Location above.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the U.S. Department of Commerce, Freedom of Information and Privacy Act Office. The request letter should be clearly marked ''PRIVACY ACT REQUEST.'' The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should reasonable specify the record contents being sought.

RECORD ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the U.S. Department of Commerce, Freedom of Information and Privacy Act Office. The request letter should be clearly marked ''PRIVACY ACT REQUEST.'' The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should reasonable specify the record contents being sought.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request to the Departmental Privacy Act Officer, U.S. Department of Commerce, Office of Privacy and Open Government, Room A300, 1401 Constitution Avenue NW., Washington, DC 20230. Requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals who interact with the Department of Commerce through social media networks or as a result of public outreach.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: August 29, 2013.

Brenda Dolan,

Department of Commerce, Freedom of Information and Privacy Act Officer.

[FR Doc. 2013–21435 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–43–2013]

Subzone 8I, Authorization of Production Activity, Whirlpool Corporation (Washing Machines); Clyde and Green Springs, Ohio

On May 1, 2013, Whirlpool Corporation (Whirlpool) submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 8I, in Clyde and Green Springs, Ohio.

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 28577, 5–15–2013). 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: August 28, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–21390 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on September 18, 2013, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda:

1. Opening remarks by the Chairman.

2. Opening remarks by the Bureau of Industry and Security.

3. Export Control Reform Update.

4. Presentation of papers or comments by the Public.

5. Subcommittee Updates.

The open session will be accessible via teleconference to 20 participants on a first come, first served basis. To join the conference, submit inquiries to Ms.Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than September 11, 2013.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at anytime before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer.

FOR FURTHER INFORMATION CONTACT: Yvette Springer on 202–482–2813.

Dated: August 29, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–21461 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–941]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC'') for the period of review (''POR'') September 1, 2011, through August 31, 2012. The review covers one exporter of subject merchandise, New King Shan (Zhu Hai) Wire Co., Ltd. (''New King Shan''). We have preliminarily found that New King Shan did not make sales of subject merchandise at less than normal value (''NV'').

DATES: *Effective Date:* September 4, 2013.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0219.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by this *Order*[1] is certain kitchen appliance shelving and racks. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, 8516.90.8000, 8516.90.8010, 7321.90.6040, and 8419.90.9520. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[2]

PRC-Wide Entity

Although a review was requested for Jiangsu Weixi Group Co. (''Weixi''), a company named in the *Initiation Notice,*[3] such request was timely withdrawn. However, we are not rescinding the review for this company at this time. While the request for review of Weixi was timely withdrawn, Weixi does not have a separate rate and, therefore, currently remains part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, we are not rescinding the review with respect to Weixi at this time, but we intend to rescind the review with respect to Weixi in the final results if the PRC-wide entity is not reviewed.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). Constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. Specifically, the Department preliminarily selected Thailand as the surrogate country, which is economically comparable to the PRC and is a significant producer of comparable merchandise. Thus, we calculated NV using Thai surrogate values, when available, to value the respondents' factors of production (''FOPs'').

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 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 and electronic versions of the

[1] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order,* 74 FR 46971 (September 14, 2009) (''*Order*'').

[2] *See* the ''Decision Memorandum for Preliminary Results for the Antidumping Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China'' (''Preliminary Decision Memorandum''), dated concurrent with and adopted by this notice, for a complete description of the Scope of the Order.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 65858 (October 31, 2012) (''*Initiation Notice*'').

Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Exporter	Weighted-average dumping margin
New King Shan (Zhu Hai) Co., Ltd.[4]	0.00%

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days after the date of publication of these preliminary results.[5] Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[6] Rebuttals briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing the case briefs, as specified by 19 CFR 351.309(d).

Interested parties that wish to request a hearing, or participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's IA ACCESS by 5:00 p.m. Eastern Standard Time within 30 days of publication of this notice.[7] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[8]

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[9] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[10]

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[11] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.[12]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[13]

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For New King Shan, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.50 percent, then zero cash deposits will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-

[4] In the first administrative review, the Department found New King Shan affiliated with certain entities and treated New King Shan and one of its affiliated entities as a single entity. Because there were no changes to the facts which supported that decision in the present review, we continue to find New King Shan and its affiliate to be a single entity in the third administrative review. Therefore, we will assign this rate to New King Shan and its affiliated entity. *See* the ''Affiliation'' section of the Preliminary Decision Memorandum.

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.310(c).

[8] *See id.*

[9] *See, e.g., 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.

[10] *See* 19 CFR 351.301(c)(3).

[11] *See* 19 CFR 351.212(b).

[12] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification for Reviews,* 77 FR 8101 (February 14, 2012) (''*Final Modification*'').

[13] *See id.*

[14] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: August 28, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. PRC-Wide Entity
4. Affiliations
5. New King Shan Affiliation/Single Entity
6. Nonmarket Economy Country
7. Separate Rates
8. Surrogate Country and Surrogate Value Data
9. Surrogate Country
10. Economic Comparability
11. Significant Producers of Identical or Comparable Merchandise
12. Data Availability
13. Date of Sale
14. Comparisons to Normal Value
15. U.S. Price—Constructed Export Price
16. Normal Value
17. Factor Valuations
18. Currency Conversion
19. Adjustment Under Section 777A(f) of the Act
20. Conclusion

[FR Doc. 2013–21464 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is rescinding the administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC) for the period December 1, 2011, through November 30, 2012, based on the withdrawal of the review request by one company and on the revocation of the order with respect to the second company for which a review was requested.

DATES: *Effective:* September 4, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg at (202) 482–1785; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2013, the Department initiated an administrative review of the antidumping duty order on pencils from the PRC for the period December 1, 2011, through November 30, 2012, based on self-requests by Beijing Fila Dixon Stationery Company, Ltd. and Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC).[1] [2] On February 4, 2013, SFTC withdrew its request for review. On July 18, 2013, the Department published the final results of the 2010–2011 administrative review of pencils from the PRC, in which it revoked the antidumping duty order on pencils (pencils order) with respect to Dixon effective December 1, 2011.[3]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(l), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the publication of the notice of initiation of the requested review. In this case, SFTC withdrew its request within the 90-day deadline. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the instant review with respect to SFTC.

In addition, since, the Department revoked the pencils order with respect to Dixon effective December 1, 2011, the instant review is moot with respect to Dixon. Therefore, we are rescinding the review with respect to Dixon.

Therefore, because no other parties requested a review of this order for this period, we are rescinding the administrative review of the pencils order covering the period December 1, 2011, through November 30, 2012, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all entries of pencils from the PRC, except for entries exported by Dixon. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

As a result of *Pencils 2010–2011 Final,* we already terminated the suspension of liquidation for subject merchandise exported by Dixon that was entered, or withdrawn from warehouse, for consumption, on or after December 1, 2011, and instructed CBP to refund, with interest, any cash deposits for such entries.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative

[1] Beijing Fila Dixon Stationery Company, Ltd. is also known as Beijing Dixon Ticonderoga Stationery Company, Ltd., Beijing Dixon Stationery Company, Ltd., and Dixon Ticonderoga Company (collectively, Dixon).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 78 FR 6291 (January 30, 2013).

[3] *See Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010–2011,* 78 FR 42932 (July 18, 2013), and accompanying Issues and Decision Memorandum (*''Pencils 2010–2011 Final''*).

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 notice is in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 26, 2013.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–21382 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting—Intersection of Cloud Computing and Mobility Forum and Workshop

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public forum and workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the Intersection of Cloud and Mobility Forum and Workshop to be held on Tuesday, October 1, Wednesday, October 2, and Thursday, October 3, 2013. The format is a three-day forum with breakout sessions held each day. The NIST Intersection of Cloud and Mobility Forum and Workshop will bring together leaders and innovators from industry, academia and government in an interactive format that combines keynote presentations, panel discussions, interactive breakout sessions, and open discussion. The forum and workshop are open to the general public. NIST invites organizations to display posters and participate as exhibitors as described in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The Intersection of Cloud and Mobility Forum and Workshop will be held 9:00 a.m.–5:00 p.m. Eastern Time (ET) on Tuesday, October 1, 9:00 a.m.–5:00 p.m. ET on Wednesday, October 2, and 9:00 a.m.–12:30 p.m. ET on Thursday, October 3, 2013.

ADDRESSES: To register, go to: *http://www.nist.gov/itl/cloud/intersection-of-cloud-and-mobility.cfm.* The event will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899 in the Red Auditorium of the Administration Building (Building 101). Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Michaela Iorga by email at *michaela.iorga@nist.gov* or by phone at (301) 975–8431. Additional information may be found at: *http://www.nist.gov/itl/cloud/intersection-of-cloud-and-mobility.cfm.*

SUPPLEMENTARY INFORMATION: NIST hosted six prior Cloud Computing Forum & Workshop events in May 2010, November 2010, April 2011, November 2011, June 2012 and January 2013. The series of workshops was organized in response to the request of the U.S. Chief Information Officer that NIST lead federal efforts on standards for data portability, cloud interoperability, and security.[1] The workshops' goals are to engage with industry to accelerate the development of cloud standards for interoperability, portability, and security, discuss the Federal Government's experience with cloud computing, report on the status of the NIST Cloud Computing efforts, launch and report progress on the NIST-led initiative to collaboratively develop a U.S. Government (USG) Cloud Computing Technology Roadmap among multiple federal and industrial stakeholders, and to advance the dialogue among all of these stakeholders. This workshop in the series has been expanded to focus on the emerging trend of Mobility in the context of its convergence with and complementary relationship to Cloud Computing.

On the first day, the workshop presenters will focus on the future of Cloud Computing, Mobility and where the two intersect, in addition to providing a status update on NIST efforts to develop or support development of security, interoperability and portability open standards, cloud service metrics and service level agreement guidance. On the second day, the workshop will focus on current Cloud Computing and Mobility challenges and how these challenges could be alleviated or exacerbated at the intersection of Cloud and Mobility. On the third day, the workshop will focus on the path forward to achieve full integration and harmonization of Cloud Computing and Mobility and to explore possibilities for harmonizing the two in ways that unleash their complementing power and augment their inter-correlation to promote progress and prosperity.

NIST invites members of the public, especially Cloud Computing and Mobility community stakeholders, to participate on Tuesday, October 1, and Wednesday, October 2, 2013, as an exhibitor. Exhibit space will be available for a total of 25 academic, industry, and standards developing organizations to exhibit their respective Cloud Computing or Mobility work at an exhibit table or with a poster. The first 25 organizations requesting an exhibit table or a poster display related to Cloud Computing & Mobility will be accepted for both days. Interested organizations should contact Tara Brown, email: *tara.brown@nist.gov* or (301) 975–4178. Requests for an exhibit table or posters will be granted on a first-come, first-serve basis. Responses must be submitted by an authorized representative of the organization. Logistics information will be provided to accepted exhibitors. NIST will provide the poster and exhibit location space and one work-table, free of charge. Exhibitors are responsible for the cost of the poster or exhibit, including staffing and materials. NIST reserves the right to exercise its judgment in the placement of posters and exhibits. General building security is supplied; however, exhibitors are responsible for transporting and securing exhibit equipment and materials. NIST is not liable with regard to damage or loss of equipment used in the exhibit table or poster.

The workshop is open to the general public; however, those wishing to attend must register at *http://www.nist.gov/itl/cloud/intersection-of-cloud-and-mobility.cfm* by 5:00 p.m. ET on Tuesday, September 24, 2013. All visitors to the NIST site are required to pre-register to be admitted and have appropriate government-issued photo ID to gain entry to NIST.

Dated: August 27, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–21489 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–13–P

[1] Office of Management and Budget, U.S. Chief Information Officer, *Federal Cloud Computing Strategy,* Feb. 8, 2011. Online: *https://cio.gov/wp-content/uploads/downloads/2012/09/Federal-Cloud-Computing-Strategy.pdf*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 9, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, Thursday, October 10, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, and Friday, October 11, 2013, from 8:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 9, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, Thursday, October 10, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, and Friday, October 11, 2013, from 8:00 a.m. until 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will take place at the United States Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006, or by email at: *annie.sokol@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 9, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, Thursday, October 10, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, and Friday, October 11, 2013, from 8:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the Secretary of Commerce, the Director of the Office of Management and Budget, and the Director of NIST on information security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Cybersecurity
- Executive Order 13636, Improving Critical Infrastructure Cybersecurity (78 FR 11737, February 19, 2013);
- Development of New Cybersecurity Framework;
- Request for Information (RFI)—Developing a Framework to Improve Critical Infrastructure Cybersecurity (78 FR 13024, February 26, 2013);
- Notice of Inquiry (NOI)—Incentives to Adopt Improved Cybersecurity Practices (78 FR 18954, March 28, 2013),

—Information Sharing Update—
- How to increase transparency and process,
- Threats environment and trends in information technology—cloud computing, mobility and communication

—Update on cybersecurity from the White House Cybersecurity Coordinator,

—Update on Legislative proposals relating to information security and privacy,

—Update on FISMA—transfer of operational responsibilities for DHS and OMB,

—Update on Circular No. A130, Memorandum No.4, Management of Federal Information Resources,

—Update on National Cyber Security Awareness Month,

—Update on Privacy and Civil Liberties Oversight Board (PCLOB), and

—Update on NIST Computer Security Division.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above. Seating will be available for the public and media. No registration is required to attend this meeting.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, October 11, 2013, between 10:00 a.m. and 10:30 a.m.). Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Annie Sokol at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Dated: August 28, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–21494 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC821

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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, has made a preliminary determination that an exempted fishing permit application submitted by the Maine Department of Marine Resources contains all of the required information and warrants further consideration. This would exempt participating commercial fishing vessels from gear restrictions for the purpose of developing an alternative gear for the directed silver hake fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before September 19, 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 ME DMR Whiting 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 ME DMR Whiting EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224, *Carly.Bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Maine Department of Marine Resources (DMR)

submitted a complete application for an exempted fishing permit (EFP) on June 17, 2013, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would exempt two federally permitted commercial fishing vessels from the requirement to use a raised footrope in the Gulf of Maine Raised Footrope Trawl Exemption Area for the purpose of testing an alternate bottom trawl net for harvesting silver hake. The applicant states that there has been poor performance of the raised footrope trawl in this area. This project would determine if there is a better performing gear that can maintain low bycatch consistent with the exempted gear performance standards.

Fishing operations would occur within the Gulf of Maine Raised Footrope Trawl Exemption Area. The two vessels would complete six days of research fishing with an estimated five 30-minute tows per day per vessel. The two vessels would conduct side-by-side tows to compare the regulated whiting net (control) with a traditional whiting net (alternative). The traditional whiting net is a modified four-seam small mesh shrimp net with a rubber cookie sweep/legs and a 2.5-inch mesh codend. Each net will retain the use of the Nordmøre grate as a bycatch deterrent. The traditional net replaces the raised footrope with a cookie sweep. This project requires exemptions from gear requirements in the Gulf of Maine Regulated Mesh Area and the Gulf of Maine Raised Footrope Trawl Exemption Area. The two research vessels will be similar in length, horsepower, and fishing capacity to maintain consistency in fishing effort. Additionally, the nets will alternate between the vessels. For each comparative tow, the following information will be recorded: position; time; depth; weather; catch data; and biological information on regulated bycatch species. All catch will be sorted by species and total weights recorded.

All catch of stocks allocated to NE multispecies sectors will be deducted from the sector's annual catch entitlement for each NE multispecies stock. Specifically, the sector assumed discard rate will be applied to fishing trips by the vessel participating under this EFP, whether the recorded discard rates from the experimental fishing are higher or lower than the assumed discard rate of the sector. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP.

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 impacts 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: August 27, 2013.

Kelly Denit,

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

[FR Doc. 2013–21385 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC758

Permanent Advisory Committee to Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (WCPFC) on October 28–October 29, 2013. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 28, 2013, from 8 a.m. to 4 p.m. HST (or until business is concluded) and October 29, 2013 from 8 a.m. to 4 p.m. HST (or until business is concluded).

ADDRESSES: The meeting will be held at the NMFS Honolulu Service Center, located at Pier 38, 1139 N. Nimitz Hwy. Suite 220, Honolulu, HI 96817.

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS Pacific Islands Regional Office; telephone: 808–944–2289; facsimile: 808–973–2941; email: *emily.crigler@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the Department of Commerce, in consultation with the U.S. Commissioners to the WCPFC, has appointed a Permanent Advisory Committee or PAC to advise the U.S. Commissioners to the WCPFC. The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. The next regular annual session of the WCPFC (WCPFC10) is scheduled for December 2–6, 2013, in Cairns, Australia. More information on this meeting and the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFCs Web site: *http://wcpfc.int/.*

Meeting Topics

The PAC meeting topics may include, but are not limited to, the following:

(1) Outcomes of the 2012 and 2013 WCPFC Scientific Committee, Northern Committee, Technical and Compliance Committee, and Annual meetings;

(2) Development of conservation and management measures for bigeye, yellowfin and skipjack tuna and other species for 2014 and beyond;

(3) Development of a WCPFC compliance monitoring scheme;

(4) Issues related to the impacts of fishing on non-target, associated, and dependent species, such as sea turtles, marine mammals, seabirds and sharks;

(5) Input and advice from the PAC on issues that may arise at WCPFC10;

(6) Potential proposals from other WCPFC members; and

(7) Other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Crigler (see **FOR FURTHER INFORMATION CONTACT**) by October 11, 2013.

Authority: 16 U.S.C. 6902

Dated: August 29, 2013.

Kelly Denit,

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

[FR Doc. 2013–21484 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC810

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in October, November, and December of 2013. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2014 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on October 17, November 7, and December 12, 2013.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on October 2, October 18, November 6, November 19, December 4, and December 11, 2013.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Braintree, MA; Mount Pleasant, SC; and Saint Petersburg, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Manahawkin, NJ; Key Largo, FL; Kitty Hawk, NC; Panama City, FL; Ronkonkoma, NY; and Kenner, LA.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 89 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. October 17, 2013, 12 p.m.–4 p.m., Hampton Inn, 215 Wood Road, Braintree, MA 02184.

2. November 7, 2013, 12 p.m.–4 p.m., Hampton Inn, 1104 Isle of Palms Connector, Mount Pleasant, SC 29464.

3. December 12, 2013, 12 p.m.–4 p.m., La Quinta Inn, 4999 34th Street North, Saint Petersburg, FL 33714.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 160 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. October 2, 2013, 9 a.m.–5 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.
2. October 18, 2013, 9 a.m.–5 p.m., Holiday Inn, 99701 Overseas Highway, Key Largo, FL 33037.
3. November 6, 2013, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.
4. November 19, 2013, 9 a.m.–5 p.m., Holiday Inn Select, 2001 North Cove Boulevard, Panama City, FL 32405.
5. December 4, 2013, 9 a.m.–5 p.m., Clarion Hotel, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.
6. December 11, 2013, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70062.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

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

Dated: August 29, 2013.

Kelly Denit,

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

[FR Doc. 2013–21462 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0185]

Submission for OMB Review; Comment Request; Withdrawal

ACTION: Notice; withdrawal.

SUMMARY: On Thursday, August 29, 2013 (78 FR 53428–53429), the Department of Defense published a notice titled Submission for OMB Review; Comment Request. Subsequent to the publication of the notice in the **Federal Register**, DoD discovered that the notice should not have published in the **Federal Register**. This notice withdraws the previous submission that published on Thursday, August 29, 2013.

DATES: This notice is effective on September 4, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

Dated: August 29, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–21475 Filed 9–3–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0113]

Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Satisfactory Academic Progress Policy

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 4, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0113 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is

soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Satisfactory Academic Progress Policy.

OMB Control Number: 1845–0108.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or households, Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 37,160,441.

Total Estimated Number of Annual Burden Hours: 1,627,616.

Abstract: This request is for an extension of the current approval of the policies and procedures for determining satisfactory academic progress (SAP) as required in Section 484 of the Higher Education Act of 1965, as amended (HEA). These regulations identify the policies and procedures to ensure that students are making satisfactory academic progress in their program at a pace and a level to receive or continue to receive Title IV, HEA program funds. If there is lapse in progress, the policy must identify how the student will be notified and what steps are available to a student not making satisfactory academic progress toward the completion of their program, and under what conditions a student who is not making satisfactory academic progress may continue to receive Title IV, HEA program funds.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–21421 Filed 9–3–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0112]

Agency Information Collection Activities; Comment Request; Annual Performance Report and Certification of Financial Need for the Jacob K. Javits Fellowship Program

AGENCY: Office of Post Secondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 4, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0112 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Performance Report and Certification of Financial Need for the Jacob K. Javits Fellowship Program.

OMB Control Number: 1840–0630.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 51.

Total Estimated Number of Annual Burden Hours: 204.

Abstract: The Jacob K. Javits Fellowship Program is authorized by Title VII, Part A, Subpart 1 of the Higher Education Act of 1965, as amended and provides up to four years of financial assistance to students to undertake graduate study at the doctoral and Master of Fine Arts level in selected fields of arts, humanities, and social sciences. Fellows are selected on the basis of (1) superior academic ability demonstrated by their achievements and exceptional promise; and (2) financial need. The amounts of new and continuing awards are based on a student's financial need as determined by the Title IV, Part F needs analysis system. Each individual fellow's need must be assessed and reported each year, along with a continuing fellow's academic progress as determined by the institution. This collection is completed annually by grantee institutions to report on the fellows' progress and levels of financial need for the next academic year. ED uses this data to calculate fellowship amounts and the total grant amount sent to each institution for each fiscal year.

Dated: August 28, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–21399 Filed 9–3–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0037]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Upward Bound and Upward Bound Math Science Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 4, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0037 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Upward Bound and Upward Bound Math Science Annual Performance Report.

OMB Control Number: 1840–NEW.

Type of Review: New collection.

Respondents/Affected Public: State, Local, or Tribal Governments, Private Sector.

Total Estimated Number of Annual Responses: 992.

Total Estimated Number of Annual Burden Hours: 16,864.

Abstract: The U.S. Department of Education is requesting a new Annual Performance Report (APR) for grants under the regular Upward Bound (UB) and Upward Bound Math and Science (UBMS) Programs. The Department is requesting a new APR because of the implementation of the Higher Education Opportunity Act revisions to the Higher Education Act of 1965, as amended, the authorizing statute for the programs. The APRs are used to evaluate the performance of grantees prior to awarding continuation funding and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information on the programs and to analyze the impact of the program on the academic progress of participating students.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–21422 Filed 9–3–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0115]

Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Subpart E—Verification Student Aid Application Information

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing; an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 4, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0115 via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in

response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart E—Verification Student Aid Application Information.

OMB Control Number: 1845–0041.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private sector, State, Local, or Tribal Governments, individuals or households.

Total Estimated Number of Annual Responses: 32,555,838.

Total Estimated Number of Annual Burden Hours: 3,938,676.

Abstract: This request is for an extension of the information collection supporting the policies and reporting requirements contained in Subpart E of Part 668 Verification and Updating of Student Aid Application Information. Sections 668.53, 668.54, 668.55, 668.56, 668.57, 668.59 and 668.61 contain information collection requirements (OMB control number 1845–0041). This subpart governs the verification and updating of the Free Application for Federal Student Aid (FAFSA) used to calculate an applicants Expected Family Contribution (EFC) for purposes of determining an applicants need for student financial assistance under Title IV of Higher Education Act of 1965, as amended (HEA). The collection of this documentation helps ensure that students (and parents in the case of PLUS loans) receive the correct amount of Title IV program assistance by providing accurate information to calculate applicants expected family contribution.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–21460 Filed 9–3–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0116]

Agency Information Collection Activities; Comment Request; Jacob K. Javits Fellowship Program Final Performance Report

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 4, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0116 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Jacob K. Javits Fellowship Program Final Performance Report.

OMB Control Number: 1840–0752.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: The purpose of the Jacob K. Javits Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. Awards are made to institutions of higher education, who disburse funds to fellows. This Final Performance Report will be used by these institutions to report information on the fellowships administered during the four-year project period.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–21476 Filed 9–3–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 19, 2013 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Rachel Blumenfeld, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Administrative Issues.
- Public Comments (15 minutes).
- Adjourn.

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rachel Blumenfeld as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Rachel Blumenfeld at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Rachel Blumenfeld at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2013Meetings.html.*

Issued at Washington, DC, on August 27, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–21437 Filed 9–3–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 23, 2013, 1:00 p.m.–5:30 p.m.

Tuesday, September 24, 2013, 8:30 a.m.–5:00 p.m.

ADDRESSES: Embassy Suites-Savannah, 145 Mulberry Boulevard, Savannah, GA 31322.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, September 23, 2013

1:00 p.m.
Combined Committees Session
Order of Committees:
- Administrative and Outreach Committee
- Facilities Disposition and Site Remediation Committee
- Nuclear Materials Committee
- Waste Management Committee
- Strategic and Legacy Management Committee

5:15 p.m.
Public Comment Session
5:30 p.m.
Adjourn

Tuesday, September 24, 2013

8:30 a.m.
Opening, Pledge, Approval of Minutes, Chair and Agency Updates
Public Comment Session
Break
Strategic and Legacy Management Committee Report
Waste Management Committee Report
Public Comment Session
12:45 p.m.
Lunch Break
2:30 p.m.
Nuclear Materials Committee Report
Facilities Disposition and Site Remediation Committee Report
Administrative and Outreach Committee Report
Public Comment Session
5:00 p.m.
Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on August 27, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–21436 Filed 9–3–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–139–000.

Applicants: Basin Creek Equity Partners L.L.C., Capitol District Energy Center Cogeneration, Forked River Power LLC, Pawtucket Power Associates Limited Partnership, Pittsfield Generating Company, L.P.

Description: Joint Application for Authorization for Disposition of Jurisdictional Facilities Pursuant to Section 203 of the FPA of Basin Creek Equity Partners, LLC, *et al.*
Filed Date: 8/26/13.
Accession Number: 20130826–5273.
Comments Due: 5 p.m. ET 9/16/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–2238–000.
Applicants: BE Ironwood LLC.
Description: Tariff Cancellation to be effective 10/25/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5184.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2239–000.
Applicants: Southwest Power Pool, Inc.
Description: 1883R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5177.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2240–000.
Applicants: Southwest Power Pool, Inc.
Description: 1884R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5180.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2241–000.
Applicants: Central Power & Lime LLC.
Description: Tariff cancellation to be effective 10/25/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5185.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2242–000.
Applicants: BE Louisiana LLC.
Description: Tariff cancellation to be effective 10/25/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5194.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2243–000.
Applicants: BE Rayle LLC.
Description: Tariff cancellation to be effective 10/25/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5202.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2244–000.
Applicants: Cedar Brakes II, L.L.C.
Description: Tariff Cancellation to be effective 10/25/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5207.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2245–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agmt with Rhodia Inc to be effective 10/26/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5217.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2246–000.
Applicants: BE Allegheny LLC.
Description: Tariff cancellation to be effective 10/25/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5218.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2247–000.
Applicants: NorthWestern Corporation.
Description: SA 689 and 690—Second Amended GIAs with PPL Montana to be effective 8/23/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5220.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2248–000.
Applicants: Southwest Power Pool, Inc.
Description: 1885R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5221.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: ER13–2249–000.
Applicants: Southwest Power Pool, Inc.
Description: 1887R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/26/13.
Accession Number: 20130826–5243.
Comments Due: 5 p.m. ET 9/16/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR13–10–000.
Applicants: North American Electric Reliability Corporation.
Description: North American Electric Reliability Corporation Petition for Approval of the Further Amendments to the Amended and Restated Delegation Agreement with Western Electricity Coordinating Council.
Filed Date: 8/26/13.
Accession Number: 20130826–5266.
Comments Due: 5 p.m. ET 9/16/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21414 Filed 9–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3576–010;ER11–3401–009.
Applicants: Golden Spread Electric Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC.
Description: Notice of Change in Status of Golden Spread Electric Cooperative, Inc., *et al.*
Filed Date: 8/27/13.
Accession Number: 20130827–5173.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER12–1153–003; ER11–1846–003; ER11–2516–004; ER11–2598–006; ER11–1848–003; ER11–2509–005; ER11–1847–003; ER11–1850–003; ER12–1152–003.
Applicants: Bounce Energy NY, LLC, Bounce Energy PA, LLC, Direct Energy Business, LLC, Direct Energy Marketing, Inc., Direct Energy Services, LLC, Energetix, Inc., Energy America, LLC, Gateway Energy Services Corporation, NYSEG Solutions, Inc.
Description: Notice of Change in Status and Notice of Change to Conditions Related to Former Owners of Bounce NY *et al.*
Filed Date: 8/27/13.
Accession Number: 20130827–5063.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–1430–000.
Applicants: Arlington Valley Solar Energy II, LLC.
Description: Refund Report to be effective N/A.
Filed Date: 8/22/13.
Accession Number: 20130822–5164.
Comments Due: 5 p.m. ET 9/12/13.

Docket Numbers: ER13–1910–002.
Applicants: Guzman Power Markets.
Description: Market-Based Rate Tariff #1 revision to be effective 8/20/2013.

Filed Date: 8/27/13.
Accession Number: 20130827–5028.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2233–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 08–27–2013 Order 764 Errata to be effective N/A.
Filed Date: 8/27/13.
Accession Number: 20130827–5168.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2250–000.
Applicants: NorthWestern Corporation
Description: Cancellation of SA 586, Amended and Restated GIA with PPL Montana to be effective 8/23/201.
Filed Date: 8/27/13.
Accession Number: 20130827–5000.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2251–000.
Applicants: Southwest Power Pool, Inc.
Description: 1888R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5035.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2252–000.
Applicants: Southwest Power Pool, Inc.
Description: 1890R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5114.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2253–000.
Applicants: PacifiCorp.
Description: BPA AC Intertie Agreement 8th Revised to be effective 10/27/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5115.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2254–000.
Applicants: Southwest Power Pool, Inc.
Description: 1889R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5116.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2255–000.
Applicants: Mansfield Power and Gas, LLC.
Description: Mansfield Power and Gas, LLC to be effective 9/30/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5119.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2256–000.
Applicants: PacifiCorp.
Description: SIEA to be effective 10/27/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5121.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2257–000.
Applicants: Southwest Power Pool, Inc.
Description: 1891R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5122.
Comments Due: 5 p.m. ET 9/17/13.

Docket Numbers: ER13–2258–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1892R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/27/13.
Accession Number: 20130827–5158.
Comments Due: 5 p.m. ET 9/17/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD13–11–000.
Applicants: North American Electric Reliability Corporation.
Description: Joint Petition of North American Electric Reliability Corporation and Western Electricity Coordinating Council for Approval of BAL–004–WECC–02 and BAL–001–1.
Filed Date: 8/20/13.
Accession Number: 20130820–5149.
Comments Due: 5 p.m. ET 9/17/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2013.

Nathaniel J. Davis, Sr..

Deputy Secretary.

[FR Doc. 2013–21415 Filed 9–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2223–000]

Town Square Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Town Square Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 17, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21416 Filed 9–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2260–000]

ABC Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of ABC Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 17, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 28, 2013..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21413 Filed 9–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2230–000]

Premier Empire Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Premier Empire Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 17, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21417 Filed 9–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2255–000]

Mansfield Power and Gas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Mansfield Power and Gas, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 17, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21418 Filed 9–3–13; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

[Public Notice: 2013–0041]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP086031XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before September 30, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at www.regulations.gov. To submit a comment, enter EIB–2013–0041 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0041 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP086031XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured commercial aircraft to Bangladesh.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for short-haul passenger air service within Bangladesh and long-haul passenger air service between Bangladesh and other regions of the world.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company

Obligor: Biman Bangladesh Airlines

Guarantor(s): The People's Republic of Bangladesh

Description of Items Being Exported

Boeing 777 Aircraft

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Cristopolis A. Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–20767 Filed 9–3–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–20]

Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Notice of Meeting

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—400 7th Street SW., Washington, DC 20024.

Date: September 11, 2013.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered:

Summary Agenda:

August 14, 2013 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda:

ASC 2014–18 Strategic Plan

ASC State Grant Policy

FY14 Appraisal Foundation and State Grant Recommendation

FY14 ASC Budget

April 2013 Appraisal Foundation Grant Reimbursement

Report on the Maine Real Estate Appraisal Program

How To Attend and Observe an ASC Meeting: Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., e.t., on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not

accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: August 29, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–21454 Filed 9–3–13; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–21]

Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Notice of Meeting

DESCRIPTION: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

LOCATION: OCC—400 7th Street, SW., Washington, DC 20024.

DATE: September 11, 2013.

TIME: Immediately following the ASC open session.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

August 14, 2013 minutes—Closed Session

Dated: August 29, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–21457 Filed 9–3–13; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 30–31, 2013

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 30–31, 2013.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to 1/4 percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. The Desk is directed to continue purchasing longer-term Treasury securities at a pace of about $45 billion per month and to continue purchasing agency mortgage-backed securities at a pace of about $40 billion per month. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency mortgage-backed securities transactions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.''

By order of the Federal Open Market Committee, August 22, 2013.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2013–21463 Filed 9–3–13; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on July 30–31, 2013, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for an Unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After publication of this second round notice, OGE plans to submit an unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by October 4, 2013.

ADDRESSES: You may submit comments on this paperwork notice to the Office of Management and Budget, Attn: Desk Officer for OGE, via fax at 202–395–6974 or email at *OIRA_Submission@omb.eop.gov.* (Include reference to ''OGE Form 450 paperwork comment'' in the subject line of the message).

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Ledvina, Agency Clearance Officer, at the U.S. Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; Email: *paul.ledvina@oge.gov.* An electronic copy of the OGE Form 450 is available in the Forms Library section of OGE's Web site at *http://www.oge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Confidential Financial Disclosure Report.

Agency Form Number: OGE Form 450.

OMB Control Number: 3209–0006.

Type of Information Collection: Extension without change of a currently approved collection.

Type of Review Request: Regular.

Respondents: Private citizens who are potential (incoming) regular Federal employees whose positions are designated for confidential disclosure filing, and special Government employees whose agencies require that they file new entrant disclosure reports prior to assuming Government responsibilities.

Estimated Annual Number of Respondents: 19,847.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 19,847 hours.

Abstract: The OGE Form 450 collects information from covered department and agency employees as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The basis for the OGE reporting regulation is section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990, 3 CFR, 1990 Comp., pp. 306–311, at p. 308) and section 107(a) of the Ethics in Government Act, 5 U.S.C. app. sec. 107(a).

OGE published a first round notice of its intent to request paperwork clearance for an unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report. See 78 FR 29753 (May 21, 2013). OGE received two responses to that notice: one from

a private citizen and one from an executive branch ethics official.

The private citizen suggested several changes to the form including requiring filers to indicate whether or not a reported asset in Part I was over $15,000 and changing OGE's underlying regulation to require filers to report the value of any assets. OGE does not believe that making either change is necessary or desirable because reporting specific asset values will not provide the ethics official with sufficient information for making the conflicts analysis. This commenter also suggested that OGE create a customized version of the OGE Form 450 for special Government employee (SGE) filers. OGE does not see the need for an additional form for use throughout the executive branch because agencies already have available an alternative procedure process at 5 CFR 2634.905(a) to collect the information necessary to perform the conflicts analysis tailored for its SGE filers.

The comment from an executive branch ethics official suggested modifying the instructions for Part III of the OGE Form 450 by adding more examples. OGE has decided not to make this change to the form because this type of information is best conveyed to filers in reference materials that can easily be updated. OGE will consider creating reference materials containing additional descriptions of reportable positions to those provided in the broad language of 5 CFR 2634.907(e)(1).

Request for Comments: Agency and public comment is again invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: August 27, 2013.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

[FR Doc. 2013–21392 Filed 9–3–13; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–20296–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for revision of the approved information collection assigned OMB control number 0945–0003 scheduled to expire on 12/31/2015. 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 October 4, 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.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0945–0003 and document identifier HHS–OS–20296–30D for reference.

Information Collection Request Title: Standards for Privacy of Individually Identifiable Health Information, Security Standards for the Protection of Electronic Protected Health Information, and Supporting Regulations Contained in 45 CFR Parts 160 and 164

OMB No.: 0945–0003.

Abstract: The Office for Civil Rights (OCR) is notifying the public of revisions to a previously approved OCR data collection. The revisions reflect certain regulatory modifications to the HIPAA Privacy and Security Rules, pursuant to the Health Information for Economic and Clinical Health (HITECH) Act and the Genetic Information Nondiscrimination Act (GINA), that were finalized in the Omnibus HIPAA Final Rule published on January 25, 2013 (78 FR 5566). These modifications strengthen privacy and security protections for individually identifiable health information used or disclosed by business associates and enhance the rights of individuals with respect to their identifiable health information.

Need and Proposed Use of the Information: The information collection addresses HIPAA requirements related to the use, disclosure, and safeguarding of individually identifiable health information by covered entities affected by the HIPAA Rules. The information is routinely used by covered entities and business associates for treatment, payment, and health care operations. In addition, the information is used for specified public policy purposes, including research, public health, and as required by other laws. The Privacy Rule also ensures that the individuals are able to exercise certain rights with respect to their information, including the rights to access and seek amendments to their health records and to receive a Notice of Privacy Practices (NPP) from their direct treatment providers and health plans.

Likely Respondents: Respondents include HIPAA covered entities and their business associates, as well as members of the public.

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 tables below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Section	Type of respondent	Number of respondents	Average number of responses per respondent	Average burden hours per response	Total burden hours
New Burdens Associated With the Final Rule					
164.316	Documentation of Security Rule Policies and Procedures and Administrative Safeguards (business associates).	300,000	1	70/60	350,000
164.504	Business Associates Needing to Establish or Modify Business Associate Agreements with Subcontractors.	375,000	1	20/60	125,000
164.520	Revision of Notice of Privacy Practices for Protected Health Information (drafting revised language) (health plans).	1,500	1	.111	167
164.520	Dissemination of Notice of Privacy Practices for Protected Health Information (health plans).	20,000,000	1	.00333335	66,667
164.520	Revision of Notice of Privacy Practices (providers).	697,000	1	.11111	77,444
Total					619,278
Ongoing Annual Burdens of Compliance with the Rules					
160.204	Process for Requesting Exception Determinations (states or persons).	1	1	16	16
164.504	Uses and Disclosures—Organizational Requirements.	700,000	1	5/60	58,333
164.508	Uses and Disclosures for Which Individual authorization is required.	700,000	1	1	700,000
164.512	Uses and Disclosures for Research Purposes.	113,524	1	5/60	9,460
164.520	Notice of Privacy Practices for Protected Health Information (health plans—periodic distribution of NPPs by paper mail).	100,000,000	1	0.25	416,667
164.520	Notice of Privacy Practices for Protected Health Information (health plans—periodic distribution of NPPs by electronic mail).	100,000,000	1	0.167	278,333
164.520	Notice of Privacy Practices for Protected Health Information (health care providers—dissemination and acknowledgement).	613,000,000	1	3/60	30,650,000
164.522	Rights to Request Privacy Protection for Protected Health Information.	150,000	1	3/60	7,500
164.524	Access of Individuals to Protected Health Information (disclosures).	150,000	1	3/60	7,500
164.526	Amendment of Protected Health Information (requests).	150,000	1	3/60	7,500
164.526	Amendment of Protected Health Information (denials).	50,000	1	3/60	2,500
164.528	Accounting for Disclosures of Protected Health Information.	70,000	1	3/60	5,833
Total					32,143,642
TOTAL HOURS					
32,762,920					

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–21398 Filed 9–3–13; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on Draft National Action Plan for Adverse Drug Event Prevention

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of Disease Prevention and Health Promotion is soliciting public comment on the draft National Action Plan for Adverse Drug Event Prevention.

DATES: Comments on the draft National Action Plan for Adverse Drug Event Prevention must be received no later than 5 p.m. on October 4, 2013. This document provides an overview of current federal efforts to support surveillance, prevention, research, and the use of policy levers to reduce adverse drug events across the United States. The draft Action Plan reflects the work of many offices across the Department of Health and Human Services, Department of Defense, Department of Justice, and Department of Veterans Affairs. The draft Action Plan also reflects input from national experts.

ADDRESSES: The draft National Action Plan for the Prevention of Adverse Drug Events is available at: *http://www.hhs.gov/ash/initiatives/ade/ade-action-plan.pdf.* Comments are preferred electronically and may be addressed to *ADE@hhs.gov*. Please use the title ''Draft National ADE Action Plan'' when sending comments electronically. Written responses should be addressed to the Department of Health and Human Services, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite LL100, Rockville MD 20852, Attention: Draft National ADE Action Plan.

FOR FURTHER INFORMATION CONTACT: Yael Harris, Director, Division of Health Care Quality, Office of Disease Prevention and Health Promotion, 240–453–8206, *yael.harris@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Adverse drug events (ADEs) have been defined by the Institute of Medicine as ''an injury resulting from medical intervention related to a drug.'' This broad term encompasses harms that occur during medical care that are directly caused by the drug and can include, but are not limited to, medication errors, adverse drug reactions, allergic reactions, and overdoses. ADEs can occur in any health care setting, including both inpatient and outpatient settings and even more likely to occur during patient transitions from one health care setting to another. ADEs are the single largest contributor to hospital-related complications within hospitals and account for over 3.5 million physician office visits, approximately 1 million emergency department (ED) visits, and an estimated 125,000 hospital admissions every year.

For these reasons, the reduction of ADEs is a top priority for the Department of Health and Human Services (HHS). Multiple Operating and Staff Divisions within HHS have been working to reduce the incidence and prevalence of adverse drug events for years. To further these efforts, in 2012, a Cross-Federal Steering Committee for Adverse Drug Event Prevention was established. The Steering Committee was charged with developing a comprehensive strategy to significantly reduce adverse drug events within the three drug classes which account for a significant proportion of all ADEs: anticoagulants, diabetes agents, and opioids. The draft Action Plan focuses on four main opportunities for federal engagement: surveillance, prevention, incentives and oversight, and research.

The draft Action Plan identifies current federal activity across both inpatient and outpatient settings, as well as transitions of care, that are related to these four opportunities, with a focus on the three drug classes associated with high levels of harm. It also highlights opportunities to advance these efforts through cross-federal partnerships and coordinated resources.

The release of the plan is only the beginning of a coordinated process that will result in stakeholders who are more engaged, aware, and knowledgeable of issues regarding the safe use of prescribed medications to prevent ADEs. Although the initial phase of the Action Plan reflects primarily the efforts and resources of federal agencies, the draft Action Plan was developed with the expectation and understanding that outlining ADE prevention goals and, more importantly, actually achieving ADE reductions and improving patient safety can be considered neither complete nor feasible without further engagement of professional organizations representing medical, nursing, pharmacy, and other allied health professionals, academia, patient and consumer representatives, and other private sector stakeholders. For this reason, every opportunity to ensure that feedback of and engagement with these entities will be sought through the public release of the draft Action Plan. Through coordinated federal partnerships, as well as public and private sector collaborations and aligned approaches, we can improve the quality and safety of health care, reduce health care costs, and improve the health and quality of life of millions of people in the United States.

II. Information Request

The Office of Disease Prevention and Health Promotion, on behalf of the HHS Steering Committee for Adverse Drug Event Prevention, requests input on the revised draft National Action Plan for Adverse Drug Event Prevention.

III. Potential Responders

HHS invites input from a broad range of individuals and organizations that have interests in reducing adverse drug events. Some examples of these organizations include, but are not limited to the following:

- Caregivers or health system providers (e.g., physicians, physician assistants, nurses, pharmacists)
- Collaboratives and consortia
- Foundations
- Health care, professional, and educational organizations/societies
- Insurers and business groups
- Medicaid- and Medicare-related organizations
- Patients and their advocates
- Pharmaceutical Industry
- Prescription drug monitoring programs
- Public health organizations
- State and local public health agencies.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. Written materials submitted for consideration should not exceed 10 pages, not including appendices and supplemental documents. Responders may submit other forms of electronic materials to demonstrate or exhibit concepts of their written responses, however, we request that comments are identified by section, subsection, and page number so they may be addressed accordingly. All comments received

before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Dated: August 28, 2013.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2013–21434 Filed 9–3–13; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting Standards Subcommittee

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Standards

Time and Date: September 18, 2013 8:30 p.m.—5:00 p.m. EDT.

Place: Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Auditorium B & C, Hyattsville, Maryland 20782, (301) 458–4524.

Status: Open

Purpose: The health care industry is experiencing major transformative changes as a result of the confluence of various national, regional and local initiatives, including: the Affordable Care Act, the adoption of electronic health records and the Meaningful Use program, implementation of national messaging and vocabulary standards for clinical exchanges, the establishment of regional health information exchanges, and adoption of new administrative standards, including new versions of HIPAA transactions, operating rules, ICD–10 and Health Plan ID. In light of these many pressing demands and requirements, the NCVHS Standards Sub-Committee is interested in developing a roadmap of key healthcare mandates and their impact on health IT standards that identify and map: (1) The various upcoming health care compliance requirements and deadlines that relate to health IT standards, in a multi-year timeline; (2) the milestones needed to successfully achieve these compliance requirements, including the development and testing of standards; (3) the underlying standards needed to achieve those milestones and requirements; (4) the interdependencies of the various compliance requirements, milestones and standards development processes; (5) the gaps, overlaps and issues with these requirements; and, (6) opportunities for better alignment, synergistic coordination, and most effective, appropriate sequencing of requirements, milestones and standards development.

To discuss these issues, this meeting will bring together subject-matter experts and representatives from various stakeholders to discuss questions related to each of the six items identified above in a facilitated exchange format. Topics to be covered include, but will not be limited to: (1) Administrative Transactions, Codes, Identifiers, and Operating Rules; (2) ACA-related health information exchange requirements; (3) Meaningful Use; (4) Quality and Patient Safety; and, (5) Privacy and Security.

Contact Person for More Information: Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245 or Denise Buenning, Centers for Medicare and Medicaid Services, Office of E-Health Standards and Services, 7500 Security Boulevard, Baltimore, Maryland, 21244, telephone (410) 786–6711. Program information as well as summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: http://www.ncvhs.hhs.gov/, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 26, 2013.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2013–21433 Filed 9–3–13; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting Full Committee

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS); Full Committee Meeting.

Time and Date:

September 16, 2013 9:00 a.m.–2:45 p.m. EDT.

September 17, 2013 9:00 a.m.–12:00 p.m. EDT. 1:00 p.m.–5:00 p.m. EDT, Working Group on Data Access and Use.

Place: U.S. Department of Health and Human Services, Hubert Humphrey Building, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day, the Committee will hear updates from the Department (HHS), the Centers for Medicare and Medicaid Services (CMS), the Office of the National Coordinator (ONC), and the Office for Civil Rights (OCR). The Committee will also review and discuss a recommendation letter from the Standards Subcommittee on the status of Implementation of HIPAA and the ACA.

Following the lunch break, Subcommittee Co-chairs will update the Committee on the hearing organized by several subcommittees to explore aspects of the Community as a Learning Health System. Also, the Committee will review the proposed outline and plans for the upcoming HIPAA Report to Congress and the NCHS Acting Director will give an update on the Center. Finally, the Committee will receive a briefing about healthcare initiatives at the Federal Communications Commission.

On the morning of the second day, the Committee will discuss and consider for approval a draft recommendation letter and hear from the Standards Subcommittee Co-Chairs about plans for the September 18 roundtable on a standards roadmap. In addition, the Committee chair will discuss elements of convergence, after which, an update will be given regarding HHS Data Working Group activities. Finally, co-chairs will give reports on plans, and the Committee chair will give final remarks and receive feedback from the membership regarding NCVHS strategic implementation. Once the full Committee adjourns, the NCVHS's Working Group on HHS Data Access & Use will convene to discuss best practices and suggestions for release of open HHS data, and summarize future plans of the Working Group. Further information will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov/.*

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon on the first day and early morning the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 26, 2013.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2013–21432 Filed 9–3–13; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–13AHA]

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 LeRoy Richardson, 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

World Trade Center Health Program Enrollment & Appeals—Pentagon & Shanksville, Pennsylvania Responders—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act), promulgated on December 22, 2010, established a Federal program to support health monitoring and treatment for emergency responders; recovery and cleanup workers; and residents, building occupants, and area workers in New York City who were directly impacted and adversely affected by the terrorist attacks of September 11, 2001. Section 3311(a)(2)(C) of the PHS Act authorizes the WTC Program Administrator (Administrator) to develop eligibility criteria for enrollment of Shanksville, Pennsylvania and Pentagon responders. Pentagon and Shanksville responders who believe they may be eligible for enrollment in the Program must complete an enrollment form. The following information includes the definition of each population:

- A Pentagon responder is someone who was a member of a fire or police department (whether fire or emergency personnel, active or retired), worked for a recovery or cleanup contractor, or was a volunteer; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on November 19, 2001.
- A Shanksville responder is someone who was a member of a fire or police department (whether fire or emergency personnel, active or retired), worked for a recovery or cleanup contractor, or was a volunteer; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania site of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on October 3, 2001.

This information is being collected in order to determine the eligibility of Pentagon and Shanksville, Pennsylvania responders as well as to provide program participants with the opportunity to appeal. This includes individuals' names, mailing address, telephone number, date of birth, and gender.

The World Trade Center Health Program (WTCHP) expects to receive approximately 1,605 applications in the first year. The application is expected to take 30 minutes to complete. Of the 1,605 applications it is expected that that 10 percent of those individuals found ineligible (4 respondents) will appeal the decision. We also expect that program participants will request certification for 874 health conditions each year. Of those 874, it is expected that 1 percent (<1) will be denied certification by the WTC Program Administrator. We further expect that such a denial will be appealed 95 percent of the time.

Of the projected 454 enrollees who will receive medical care, it is estimated that 3 percent (14) will appeal a determination by the WTC Health Program that the treatment being sought is not medically necessary. We estimate that the appeals letter will take no more than 30 minutes to complete.

Pharmacies will electronically transmit reimbursement claims to the WTCHP. HHS estimates that four pharmacies will submit reimbursement claims for 1,060 prescriptions per year, or 265 per pharmacy; we estimate that each submission will take one minute.

WTC responders who travel more than 250 miles to a nationwide network provider for medically necessary treatment may be provided necessary and reasonable transportation and other expenses. These individuals may submit a travel refund request form, which should take respondents 10 minutes to complete.

The total estimated burden is approximately 832 hours. There is no cost to respondents other than their time.

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
Pentagon or Shanksville, Pennsylvania Responder.	World Trade Center Health Program Pentagon & Shanksville, Pennsylvania Responder Eligibility Application.	1,605	1	30/60	803
Pentagon or Shanksville, Pennsylvania Responder.	Appeals to Eligibility Denial	4	1	30/60	2
Pentagon or Shanksville, Pennsylvania Responder.	Appeals regarding certification of health conditions.	1	1	30/60	1

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Pentagon or Shanksville, Pennsylvania Responder.	Appeals regarding treatment	14	1	30/60	7
Pharmacies	Outpatient prescription pharmaceuticals.	4	265	1/60	18
Pentagon or Shanksville, Pennsylvania Responder.	WTC Health Program Medical Travel Refund Request.	1	1	10/60	1
Total					832

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–21467 Filed 9–3–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–13AHB]

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 LeRoy Richardson, 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

Risk Factors for Community-Associated *Clostridium difficile* Infection through the Emerging Infections Program (EIP)—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The epidemiology of *C. difficile* has changed dramatically during recent years, with increases in incidence and severity of disease being reported across several countries. In addition, populations previously thought to be at low risk, such as young, healthy individuals residing in the community, are now being identified with severe *C. difficile* infection (CDI). Community-associated CDI is estimated to represent 32% of all CDI based on population-based CDI surveillance data, with an incidence of 30–40 per 100,000 population in the United States. Previous reports have shown that approximately 40% of patients acquiring community-associated CDI (CA–CDI) were not exposed to antibiotics, which is a well-recognized risk factor for CDI; suggesting that additional factors may contribute to infections. Other factors such as proton pump inhibitors have been raised as a risk factor for CDI in the community and on February 8, 2012, the U.S. Food and Drug Administration issued a communication advising physicians to consider the diagnosis of CDI among patients taking proton pump inhibitors. However, the data on the association of CDI with proton pump inhibitors are still controversial and studies to quantify this association are needed. In addition to the understanding of the factors that predispose patients to CDI, further evaluation of potential *C. difficile* exposure sources in the community is necessary to guide prevention efforts.

The sources of *C. difficile* and the risks for developing CDI in previously thought to be low-risk community populations are not well defined. Although initial evaluation of CA–CDI cases identified several potential risk factors (e.g., outpatient healthcare exposures, infants in the home, and proton pump inhibitor use), the magnitude of association of these risks with disease development using a control population has not been evaluated to date. This proposed case-control study will enable investigators to evaluate these associations and focus future investigations and prevention strategies on those factors identified as significantly associated with disease development.

CDC requests OMB approval to collect information from the public using a standardized questionnaire over a three-year period. The study will have a pediatric and an adult component given that *C. difficile* exposure sources in the community may vary by age. For example, *C. difficile* has been isolated from daycare centers' environment which may be a potential source for *C. difficile* acquisition in pediatric population, but less likely to be a source for adults.

For this project, we estimate that 129 persons ≥18 years of age with *C. difficile* infection (case-patients) will be contacted for the CDI study interview annually. Of those, 71 will agree and be eligible to participate in the study and will proceed to the full telephone interview. A total of 142 persons ≥ 18 years of age without C. *difficile* infection (control-patients) will be contacted for the interview annually. Of those, 71 will agree and be eligible to participate in the study and will complete the full interview. Among the pediatric group, we estimate that 141 and 194 parents of children between 1 and 5 years of age with and without *C. difficile* infection will be contacted for the interview, respectively. Among the case- and

control-patients, we estimate that 78 in each group will agree and be eligible to participate in the study and will proceed to the full interview. We anticipate the screening questions to take about 5 minutes and the telephone interview 30 minutes per respondent in both the adult and pediatric groups.

There are no costs to respondents. The total response burden for the study is estimated as follows:

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents (adult and pediatric)	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Case subjects >17 years of age	Screening Process	129	1	5/60	11
	Telephone interview	71	1	30/60	36
Control Subjects >17 years of age	Screening Process	142	1	5/60	12
	Telephone interview	71	1	30/60	36
Case Subject ≤1–5 years of age	Screening Process	141	1	5/60	12
	Telephone interview	78	1	30/60	39
Control Subjects ≤1–5 years of age	Screening Process	194	1	5/60	16
	Telephone interview	78	1	30/60	39
Total					201

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–21468 Filed 9–3–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

DEPARTMENT OF JUSTICE

Office of Justice Programs

[CDC–2013–0020; NIOSH–269]

Request for Information: Collection and Use of Nonfatal Workplace Violence Information from the National Crime Victimization Survey

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) and the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

ACTION: Request for public comments.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) and the Bureau of Justice Statistics (BJS) of the Office of Justice Programs, Department of Justice (DOJ), are collaborating to request public comments to inform BJS's approach in collecting and reporting data related to nonfatal workplace violence in the National Crime Victimization Survey (NCVS). NIOSH and BJS request input on these issues. The instructions for submitting comments can be found at www.regulations.gov. Written comments submitted to the Docket will be used to inform BJS with the planning and collection of workplace violence data in the NCVS. Dates: Public Comment Period: Comments must be received by November 27, 2013 to be considered by BJS and NIOSH. Addresses: Written comments: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- Instructions: All submissions received must include the agency name and docket number [CDC–2013–0020; NIOSH–269]. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

I. Background

The National Institute for Occupational Safety and Health (NIOSH) is the federal agency responsible for conducting research to prevent workplace injuries and illnesses. Workplace violence is a common threat to worker safety and health, and NIOSH has a long history of conducting research on the prevalence, risk factors for, and prevention of work-related violence.

The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics collects data on rape, sexual assault, robbery, aggravated assault, and simple assault against persons age 12 or older through the National Crime Victimization Survey (NCVS). The NCVS gathers data from a continuous, nationally representative sample of approximately 86,000 households comprising nearly 156,000 persons age 12 or older in the United States, reported and not reported to the police. The NCVS provides information about victims (e.g. age, gender, race, Hispanic origin, marital status, income, and educational level), offenders (e.g. gender, race, approximate age, and victim/offender relationship), and the nature of the crime (time and place of occurrence, use of weapons, nature of injury, and economic consequences).

NCVS respondents who report that they were a victim of a violent crime (rape, sexual assault, robbery, aggravated assault, or simple assault) while working or on duty are included in NCVS special reports on workplace violence. BJS published special reports on workplace violence in 1994, 1998 (covering 1992–96), 2001 (covering 1993–99), 2011 (covering 1993–2009) and 2013 (focused on government workers, 1994–2011). These reports are available on the BJS Web site as part of their violence in the workplace series at *http://www.bjs.gov/index.cfm?ty=pbse&sid=56*

All of the workplace violence special reports used the same classification system to determine work-relatedness of the incidents. To qualify as workplace violence the incident must have:

- Involved someone 16 years of age or older,
- Had the activity variable coded as ''working'',
- Involved a violent crime,
- Involved a person who had a job or worked at a business the week preceding the survey or during the 6 months preceding the survey, and
- The event must have occurred within the United States.

Additionally, workplace violence to teachers commuting to and from work were included to make the data comparable to estimates presented in the Department of Education/BJS report, ''Indicators of School Crime and Safety.'' The NCVS is a nationally representative household survey so it excludes persons who are homeless, persons living in military barracks or stationed outside of the U.S., and those persons living in institutionalized group quarters, such as prisons, mental health facilities, and certain hospitals and assisted-living facilities. In 2002, NIOSH and BJS conducted The Workplace Risk Supplement to the NCVS, which was administered to employed respondents who were 16 years or older in all households selected for the NCVS during the 6-month reference period from January through June 2002. This supplement used the same classification system described for the special reports.

II. Purpose of Request for Comments

NIOSH and BJS are collaborating to improve and enhance the collection of nonfatal workplace violence data through the NCVS. This is part of a larger BJS effort to re-design and increase the utility of nonfatal violence data collected through the NCVS.

NIOSH and BJS are seeking input on: (1) Methods to identify work-related violence using the existing variable structure within the NCVS, and (2) other suggested enhancements to improve the ability of the NCVS to describe the prevalence, patterns, and trends in workplace violence. Responses to this request for information will be considered by BJS in: (1) The re-design of the NCVS, (2) an on-line NVCS reporting tool, and (3) future BJS workplace violence reports. NIOSH and BJS also anticipate utilizing this information in a jointly issued technical report on methodological issues with identifying and reporting on nonfatal workplace violence through the NCVS.

III. Identifying Workplace Violence in the NCVS

NIOSH defines workplace violence as ''violent acts, including physical assaults and threats of assault, directed toward persons at work or on duty.'' The Occupational Safety and Health Administration (OSHA) defines workplace violence as any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. These are broad definitions and most data collection systems will not capture all incidents of workplace violence. For example, data on workplace violence collected through the NIOSH/Consumer Product Safety Commission, National Electronic Injury Surveillance System- Work Supplement (NEISS-Work), which is collected from a nationally representative sample of hospital emergency departments, is more likely to capture workplace violence that results in physical injuries than other forms that do not result in injury such as threats, harassment and intimidation, *http://www2a.cdc.gov/risqs/wrtechinfo.htm.*

Additionally, the NIOSH and OSHA definitions are restricted to incidents that occur at work and do not encompass violence that may have a work-association but not have occurred at work, such as violence associated with commuting to and from a workplace. BJS and NIOSH plan to address these issues and the implications for assessing trends in workplace violence using the NCVS and other data sources in the anticipated jointly-issued technical report on workplace violence methodological issues in the NCVS.

Determining work-relatedness of the violent incidents recorded by the NCVS is not straightforward. Many factors influence the decision to include the case as a workplace violence incident. The work-related variables that are currently collected in the NCVS appear below. Any combination of these variables is possible. Immediately below the variable list are alternatives for variable combinations that are currently being used or considered in determining work-relatedness in the NCVS. There are advantages and disadvantages to different methods, including the ability to assess trends using historical data and being more inclusive or exclusive in identifying work associations.

Input is requested regarding the best combination of variables to determine work-relatedness of the violent incident. In particular, what would be your first and second choices for a combination of variables to identify work-related violence and why?

NCVS crime incident report instrument: *http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245#Questionnaires*

IV. Currently Collected Variables in the NCVS That May Be Considered to Establish Work-relatedness

Household-level Variables

1. Does anyone in this household operate a business from this address?
2. Is there a sign on the premises or some other indication to the general public that a business is operated from this address?

Person-level Variables

3. Did you have a job or work at a business last week?
4. Did you have a job or work at a business during the last 6 months?
5. Did that (job/work) last 2 consecutive weeks or more?
6. Which of the following best describes your job?

Medical Profession

- Physician
- Nurse
- Technician
- Other

Mental Health Services Field

- Professional (Social worker/Psychiatrist)
- Custodial care
- Other

Teaching Profession

- Preschool
- Elementary
- Junior high or middle school
- High school
- College or university

Technical or Industrial School

- Special education facility
- Other

Law Enforcement Security Field

- Law enforcement officer
- Correctional officer
- Security guard
- Other

Retail Sales

- Convenience or liquor store clerk
- Gas station attendant
- Bartender
- Other

Transportation Field

- Bus driver
- Taxi cab driver
- Other

Something Else

7. Is your job with a private company, federal government, state, county, or local government, or yourself?
8. While working at your job, do you work mostly in city, suburb, or rural area or combination of these?
9. Are you employed by a college or university?

Incident-Level Variables

10. Was the victim injured? How (Type of injury)?
11. What were you doing when this incident (happened/started)?
- Working or on duty
- On the way to or from work
- On the way to or from school
- On the way to or from other place
- Shopping, errands
- Attending school
- Leisure activity away from home
- Sleeping
- Other activities at home
- Other

12. Were you employed at the time of the incident?
13. What was the type of work performed at the time of the incident?
14. Is this business incorporated?
15. What was the business type?
16. What was the type of industry at the time of the incident?
17. Collapsed industry code.
18. Collapsed occupation code.
19. While working at this job, did you work mostly in a city, suburb, rural area, or combination of any of these?
20. Did this incident happen at your work site?
21. Did you usually work days or nights?
22. Is this your current job?
23. Did you lose time from work because of the injuries you suffered in this incident?
24. How many days did you lose because of injuries?
25. Did you lose any pay that was not covered by unemployment insurance, sick leave or some other source?
26. About how much pay did you lose?
27. Did you lose any (other) time from work because of this incident for such things as cooperating with a police investigation, testifying in court, or repairing or replacing damaged or stolen property?
28. How much time did you lose altogether because of cooperating with a police investigation, testifying in court, or repairing or replacing damaged or stolen property?
29. During these days, did you lose any pay that was not covered by unemployment insurance, paid leave, or some other source?
30. About how much pay did you lose?
31. Were there any (other) household members 16 years or older who lost time from work because of this incident?
32. How much time did they lose altogether?

Alternatives for determining work-relatedness

Variable alternatives currently used or under consideration and some advantages and disadvantages are:

Alternative I: Current Coding Scheme Used by the BJS:

- Age 16 (victims age 16 or older),
- Had a job or worked at a business last week or during the last 6 months,
- Excludes outside of U.S.
- Activity at time of incident—working,
- Violent crime

Advantages—can be used to generate rates of workplace violence by occupation and other aspects, facilitates trend analyses with earlier data, relatively consistent with NIOSH and OSHA definitions of workplace violence (with exception of non-robbery threats of violence, harassment and intimidation which are not included in the NCVS definition of a violent crime and the inclusion of commuting injuries for teachers)

Disadvantages—calculations of rates of workplace violence by occupation may not be as accurate because job at the time of incident may be different from current job. The percentage of workplace violence that occurred in which the job at the time of the incident was different from the job at the time of the NCVS interview increased from 44% in 2007 to about 56% in 2011.

Alternative II

- Age 16 or older,
- Had a job or worked at a business last week or during the last 6 months,
- Job at time of incident was the same as job mentioned at beginning of NCVS interview,
- Excludes outside of U.S.,
- Activity at time of incident-working,
- Violent crime.

Advantages—relatively consistent with NIOSH and OSHA definitions of workplace violence, allows for a more accurate calculation of rates of workplace violence by occupation than what is done currently (everyone has the same job for the numerator and denominator).

Disadvantages—persons that experienced workplace violence at a time where their job does not match their job at the NCVS interview are excluded. As mentioned above, the percentage of workplace violence in which the job at the time of the incident was different from the job at the time of the NCVS interview has increased in recent years from 44% in 2007 to about 56% in 2011. These cases would be excluded from estimates of workplace violence by using Alternative II.

Alternative III

- Age 16 or older,
- Excludes outside of U.S.,
- Activity at time of incident-working,
- Violent crime

Advantages—relatively consistent with NIOSH and OSHA definitions.

Disadvantages—calculations of rates of workplace violence by occupation may not be as accurate because job at the time of incident may be different from current job.

Alternative IV

- Age 16 or older,
- Had a job or worked at a business last week or during the last 6 months,
- Excludes outside of U.S.,
- Activity at time of incident-working or on the way to/from work,
- Violent crime

Advantages—includes violence committed on the way to and from work as well as while working.

Disadvantages—calculations of rates of workplace violence by occupation may not be as accurate because job at the time of incident may be different from current job. Inconsistent with NIOSH and OSHA definitions of workplace violence which exclude violence during the commute to or from work.

Alternative V

- Age 16 or older,
- Excludes outside of U.S.,
- Activity at time of incident-working,
- Employed at the time of the incident,
- Violent crime.

Advantages—know for certain the victim was employed at the time of the incident, relatively consistent with NIOSH and OSHA definitions.

Disadvantages—calculations of rates of workplace violence by occupation may not be as accurate because job at the time of incident may be different from current job.

Alternative VI

- Age 16 or older,
- Excludes outside of U.S.,
- incident happened at your worksite,
- violent crime.

Advantages—know for certain where the crime took place.

Disadvantages—excludes workplace violence that occurs while a person is on duty away from the worksite and thus inconsistent with NIOSH and OSHA definitions of workplace violence.

V. The second item for which we are requesting input is any other suggested enhancements to improve the ability of the NCVS to report on workplace violence. Two enhancements that are currently being explored by BJS and

NIOSH are: (1) The ability to report NCVS data by a workplace violence typology used by NIOSH and public health researchers (Type I—Criminal Intent, Type II—Customer/client, Type III—Worker-on-Worker, and Type IV Intimate Partner Violence [detail available at *http://www.public-health.uiowa.edu/iprc/resources/workplace-violence-report.pdf*]), and (2) revisions to the categories of occupations that are used in reports. One of the factors that will need to be considered with respect to occupation categories is the NCVS sample size and the ability to reliably report on specific occupations.

In a recent review of the NCVS data collection instrument, there were a number of potential limitations that were identified. These include, but are not limited to:

1. The victim-offender relationship variable is first conditioned on whether the victim knows the perpetrator or not. This complicates the use of such relationships as ''customer/client or patient.'' A worker who was assaulted by a customer who was also a stranger would be skipped out of the victim-offender relationship variable. Only customers that were considered casual acquaintances or well known to the victim would be filtered into the specific relationship coding. So it is possible that many offenders who were customers or clients end up in the stranger coding.

2. Currently, NCVS collects limited occupation types (see section IV, #6). These categories are primarily considered high-risk occupations for certain victimization types. The categories do not reflect changes in the workforce since 1990. Input is requested regarding potential enhancements to the collection and reporting of nonfatal workplace violence in the NCVS. In particular, do you think it would be useful for BJS to include the public health typology of workplace violence in future workplace violence reports and in the on-line NCVS reporting tool? Do you have suggestions for reporting on specific occupation or occupation groups and/or methods to address limitations regarding the NCVS sample size? Do you have suggestions for addressing the potential limitations identified in the survey, such as issues with the relationship variable?

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Hartley, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5812. Email: *DHartley@cdc.gov.*

Dated: August 20, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Dated: August 26, 2013.

William Sabol,

Acting Director, Bureau of Justice Statistics.

[FR Doc. 2013–21441 Filed 9–3–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Availability of Draft National Toxicology Program Technical Reports; Request for Comments; Notice of Meeting

SUMMARY: The National Toxicology Program (NTP) announces the availability of four draft NTP Technical Reports (TRs) scheduled for peer review: vinylidene chloride, cobalt metal dust, tetrabromobisphenol A (TBBPA), and glycidamide. The draft TRs should be available by September 20, 2013, at *http://ntp.niehs.nih.gov/go/36051*. The peer-review meeting is open to the public and preregistration is requested for both public attendance and comment. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/36051*.

DATES:

Meeting: October 29, 2013, 8:30 a.m. to approximately 5:00 p.m. Eastern Daylight Time (EDT).

Document Availability: Draft TRs should be available by September 20, 2013, at *http://ntp.niehs.nih.gov/go/36051*.

Public Comments Submissions: Deadline is October 15, 2013.

Pre-Registration for Meeting and/or Oral Comments: Deadline is October 25, 2013.

ADDRESSES:

Meeting Location: Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Web page: The draft TRs, preliminary agenda, registration, and other meeting materials are at *http://ntp.niehs.nih.gov/go/36051.*

Webcast: The meeting will be available via webcast at *http://www.niehs.nih.gov/news/video/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, NTP Designated Federal Official, Office of Liaison, Policy and Review, DNTP, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709. Phone: (919) 541–9834, Fax: (301) 480–3272, Email: *whiteld@niehs.nih.gov.* Hand Delivery/Courier: 530 Davis Drive, Room 2136, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Meeting and Registration: The meeting is open to the public with time set aside for oral public comment; attendance at the NIEHS is limited only by the space available. Pre-registration to attend the meeting and/or provide oral comments is by October 25, 2013, at *http://ntp.niehs.nih.gov/go/36051*. Visitor and security information for those attending in person is available at *http://www.niehs.nih.gov/about/visiting/index.cfm*. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Yun Xie at phone: (919) 541–3436 or email: *yun.xie@nih.gov.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

The preliminary agenda and draft TRs should be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/36051*) by September 20, 2013. Additional information will be posted when available or may be requested in hardcopy, see **FOR FURTHER INFORMATION CONTACT**. Following the meeting, a report of the peer review will be prepared and made available on the NTP Web site. Registered attendees are encouraged to access the meeting Web page to stay abreast of the most current information regarding the meeting.

Request for Comments: The NTP invites written and oral public comments on the draft TRs. The deadline for submission of written comments is October 15, 2013, to enable review by the peer-review panel and NTP staff prior to the meeting. Pre-registration to provide oral comments is by October 25, 2013, at *http://ntp.niehs.nih.gov/go/36051*. Public comments and any other correspondence on the draft TRs should be sent to the **FOR FURTHER INFORMATION CONTACT**. Persons submitting written comments should include their name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public comment at this meeting is welcome, with time set aside for the presentation of oral comments on the draft TRs. In addition to in-person oral comments at the meeting at the NIEHS,

public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The lines will be open from 8:30 a.m. until approximately 5:00 p.m. EDT on October 29, although oral comments will be received only during the formal public comment periods indicated on the preliminary agenda. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Each organization is allowed one time slot. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair.

Persons wishing to make an oral presentation are asked to register online at *http://ntp.niehs.nih.gov/go/36051* by October 25, 2013, and indicate whether they will present comments in-person or via the teleconference line, and indicate the TRs on which they plan to comment. If possible, oral public commenters should send a copy of their slides and/or statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of speakers who register on-site.

Background Information on NTP Peer Review Panels: NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide a current *curriculum vitae* to the **FOR FURTHER INFORMATION CONTACT.** The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: August 28, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–21405 Filed 9–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Adult Disorders.

Date: October 8–9, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group Mental Health Services Research Committee.

Date: October 10, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Disorders Involving Children and Their Families.

Date: October 11, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–402–8152, *mbroitma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 28, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21404 Filed 9–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 21, 2013, 11:00 a.m. to October 21, 2013, 3:00 p.m., National Cancer Institute Shady Grove, West Tower, 9609 Medical Center Drive, Room 3W034, Rockville, MD, 20850 which was published in the **Federal Register** on August 16, 2013, 78FR50065.

The meeting notice is amended to change the title from ''Awards for Research on Imaging and Biomarkers for Early Cancer Detection (U01)'' to ''Awards for Research on Imaging and Biomarkers for Early Cancer Detection (P50, U01)''. The meeting is closed to the public.

Dated: August 28, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21395 Filed 9–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD T32 Application Review.

Date: September 25, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer Division of Extramural Activities NIDCD, NIH 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 28, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21396 Filed 9–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Innovative Treatment Development.

Date: September 26, 2013.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 28, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21403 Filed 9–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–34]

Federal Property Suitable as Facilities to Assist the Homeless

Correction

In notice document 2013–20287, appearing on pages 52559 through 52560 in the issue of Friday, August 23, 2013, make the following corrections:

1. On page 52560, in the first column, on the eighteenth line from the bottom of the page, the heading ''Oregon'' should read as follows:

Suitable/Unavailable Properties

Building

Oregon

2. On the same page, in the second column, on the eleventh line from the bottom of the page, the heading ''Maryland'' should read as follows:

Unsuitable Properties

Building

Maryland

3. On the same page, in the third column, on the second line, the heading ''*Land''* should read as follows:

Unsuitable Properties

Land

[FR Doc. C1–2013–20287 Filed 9–3–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N201; FF06E23000–134–FXES11120600000]

Endangered and Threatened Wildlife and Plants; Permits; Low-Effect Habitat Conservation Plan for the Utah Prairie Dog in Iron County, Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received a permit application from the Iron County Commission and are announcing the availability of a Draft Low-effect Habitat Conservation Plan for the Utah prairie dog in Iron County, Utah, for review and comment by the public and Federal, Tribal, State, and local governments. We request comment on the draft low-effect HCP.

DATES: Written comments must be submitted by October 4, 2013.

ADDRESSES: Send written comments by U.S. mail to Laura Romin, Deputy Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 2369 W Orton Circle, Suite 50, West Valley City, UT 84119, or via email to *utahfieldoffice_esa@fws.gov.* You also may send comments by facsimile to 801–975–3331. The draft low-effect HCP is available on our Mountain-Prairie Region Ecological Services Web site at *http://www.fws.gov/utahfieldoffice/LatestNews.html.* You also may review a copy of this document during regular business hours at the Utah Ecological Services Field Office (see address above). If you do not have access to the Web site or cannot visit our office, you may request copies by telephone at 801–975–3330 ext. 142 or by letter to the Utah Field Office.

FOR FURTHER INFORMATION CONTACT: Laura Romin, 801–975–3330, ext. 142; *laura_romin@fws.gov.*

SUPPLEMENTARY INFORMATION: We announce availability for review and comment of the Draft Low-effect Habitat Conservation Plan for the Utah prairie dog in Iron County, Utah. The Iron County Commission has prepared a draft low-effect habitat conservation plan (HCP) for residential, commercial, and industrial developments in Iron County, Utah, that may result in incidental take of the federally threatened Utah prairie dog. The intent of this low-effect HCP is to serve as an interim mechanism to authorize

incidental take anticipated from development in the short term while a more comprehensive long-term or range-wide habitat conservation plan is prepared for the species. We request public comment on the draft low-effect HCP.

Section 9 of the Endangered Species Act (ESA) (16 U.S.C. 1538) and its implementing regulations prohibit take of species listed as endangered or threatened. The definition of take under the ESA includes to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species or to attempt to engage in such conduct'' (16 U.S.C. 1532(19)). Section 10 of the ESA (16 U.S.C. 1539) establishes a program whereby persons seeking to pursue activities that are otherwise legal, but could result in take of federally protected species, may receive an incidental take permit (ITP). Applicants for ITPs must submit a HCP that meets the section 10 permit issuance criteria. ''Low-effect'' incidental take permits are those permits that, despite their authorization of some small level of incidental take, individually and cumulatively have a minor or negligible effect on the species covered in the HCP.

Background

In 1998, we issued an incidental take permit to Iron County (County) under the Iron County HCP for take of Utah prairie dogs from development activities. In the meantime, we have been working with all counties within the range of the species to develop a comprehensive rangewide HCP that would contribute to recovery of the species. The Iron County commissioners are concerned that projected increases in economic development in the county during the next couple of years may result in exceeding the amount of take authorized under the 1998 Iron County HCP.

As a bridge to cover additional take anticipated before a range-wide or long-term plan can be completed, Iron County has submitted a draft low-effect HCP that would authorize the take of no more than 600 acres (243 hectares) of occupied Utah prairie dog habitat over a maximum 3-year period. The take would be distributed into two zones (a green zone, which primarily encompasses parcels within already developed areas of the cities, and a red zone, which is on the outskirts of the developing communities). The low-effect HCP's minimization and mitigation measures in the green zone and, for small, low-quality colonies, in the red zone would essentially mimic those of the 1998 Iron County HCP. Within the red zone, large colonies and medium- or high-quality Utah prairie dog habitats would be avoided under this low-effect HCP, but could be mitigated through the 1998 Iron County HCP and the use of conservation banks. Under this low-effect HCP, developers would apply to the County for their individual take permits or letters of authorization.

Our Preliminary Determination

We have made a preliminary determination that the HCP qualifies as a ''low-effect'' habitat conservation plan as defined by our Habitat Conservation Planning Handbook (November 1996).

We base our determination on the following information:

(1) The size and scope of the incidental take of Utah prairie dogs is relatively small, and limited to maximum of 600 ac (243 ha) of Utah prairie dog occupied habitats over three years;

(2) The total amount of take amounts to only 3.6 percent of the total mapped Utah prairie dog habitat in the West Desert Recovery Unit; and

(3) Most of the take is limited to already developed areas or those areas projected for development in the near future. These areas do not serve to support current or future metapopulations and objectives for recovery of the species in the wild.

Overall we conclude that implementation of the plan would result in overall minor or negligible effects on the Utah prairie dog and its habitats. We may revise this preliminary determination based on public comments submitted in response to this notice.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 28, 2013.

Larry Crist,

Field Supervisor, Utah Ecological Services Field Office.

[FR Doc. 2013–21438 Filed 9–3–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N202; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before October 4, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1)

Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Zoological Wildlife Foundation Inc., Miami, FL; PRT–96647A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include the clouded leopard (*Neofelis nebulosa*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Melvin Pack, Provo, UT; PRT–150838

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for red siskin (*Carduelis cucullata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: James Keller, San Manuel, TX; PRT–14206B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for scimitar-horned oryx (*Oryx dammah*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: James Keller, San Manuel, TX; PRT–14207B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: Tularosa Clark Ranch, LLC, Brackettville, TX; PRT–14133B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Tularosa Clark Ranch, LLC, Brackettville, TX; PRT–14200B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: DFR Ranch, San Angelo, TX; PRT–14386B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: DFR Ranch, San Angelo, TX; PRT–14385B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: John Moody, Valley Mills, TX; PRT–14274B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: Smithsonian National Zoological Park, Washington, DC; PRT–12904B

The applicant requests a permit to import one captive born and two captive held female Asian elephants (*Elephas maximus*) from Calgary Zoo, Canada, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Bryan Zaher, Palmer, AK; PRT–14421B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), spotted pond turtle (*Geoclemys hamiltonii*), and yellow-spotted river turtle (*Podocnemis unifilis*) to enhance the species' propagation or survival. This notification covers activities to be

conducted by the applicant over a 5-year period.

Applicant: Custom Reptiles, Boerne, TX; PRT–15141B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), red ruffed lemur (*Varecia rubra*), black lemur (*Eulemur macaco*), brown lemur (*Eulemur fulvus*), cotton-top tamarin (*Saguinus oedipus*), Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), spotted pond turtle (*Geoclemys hamiltonii*), yellow-spotted river turtle (*Podocnemis unifilis*), dwarf crocodile (*Osteolaemus tetraspis*), Yacare caiman (*Caiman yacare*), broad-snouted caiman (*Caiman latirostris*), Cuban ground iguana (*Cyclura nubila nubila*), Grand Cayman blue iguana (*Cyclura lewisi*), and Cayman Brac ground iguana (*Cyclura nubila caymanensis)* to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jeremy Sabatini, Brewster, NY; PRT–15137B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata)* to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael Heim, Houston, TX; PRT–14209B

Applicant: Coby Bausch, Iraan, TX; PRT–13144B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–21445 Filed 9–3–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N203: FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
07611B	Manny Hemmerling	78 FR 37563; June 21, 2013	August 8, 2013.
08815B	William Tones	78 FR 37562; June 21, 2013	August 8, 2013.
09161B	John Alexander	78 FR 40762; July 8, 2013	August 9, 2013.
99464A	Donald Lepp	78 FR 19732; April 2, 2013	June 7, 2013.

MARINE MAMMALS

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
99215A	Office of Sponsored Programs and Research Administration, University of Illinois.	78 FR 37563; June 21, 2013	August 22, 2013.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–21446 Filed 9–3–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19328–B; LLAK944000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Evansville, Inc. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.). The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Evansville, Inc. The lands are in the vicinity of Evansville, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 25 N., R. 18 W.,
Sec. 20.
Containing 639.92 acres.

Notice of the decision will also be published once a week for four consecutive weeks in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 4, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Division of Lands and Cadastral.

[FR Doc. 2013–21456 Filed 9–3–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BK0000]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; North Carolina, stay lifted.

SUMMARY: On Thursday, January 3, 2013, there was published in the **Federal Register**, Volume 78, Number 2, on pages 318–319 a notice entitled ''Eastern States: Filing of Plats of Survey, North Carolina''. Said notice referenced the stay of the plat of the dependent resurvey of a portion of the Qualla Indian Boundary, land held in trust for the Eastern Band of Cherokee Indians in Swain County, in the state of North Carolina. This survey was accepted December 19, 2012.

The protest against the survey was dismissed on August 16, 2013 and the plat of survey accepted December 19, 2012, was officially filed in Eastern States Office, Springfield, Virginia, at 7:30 a.m., on August 16, 2013. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $7.50 per copy.

Dated: August 27, 2013.

John Sroufe,

Acting Chief Cadastral Surveyor.

[FR Doc. 2013–21440 Filed 9–3–13; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[X30059409137000000, 4073000]

Charter Renewal, Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to provide advice and recommendations to the Secretary concerning the operation of Glen Canyon Dam and the exercise of other authorities pursuant to applicable Federal law.

FOR FURTHER INFORMATION CONTACT: Linda Whetton, 801–524–3880.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). The certification of renewal is published below.

Certification

I hereby certify that Charter renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2013–21419 Filed 9–3–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Collection of Information on Claims of U.S. Nationals Referred to the Commission by the Department of State Pursuant to the International Claims Settlement Act of 1949, as Amended

ACTION: 30-Day notice.

The Foreign Claims Settlement Commission (Commission), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 126, page 39325 on July 1, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 4, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this

notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The title of the form/collection:* Statement of Claim for filing of Claims Referred to the Commission under Section 4(a)(1)(C) of the International Claims Settlement Act of 1949.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: FCSC–1. Foreign Claims Settlement Commission, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Corporations. Information will be used as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of U.S. nationals, referred to the Commission by the Department of State pursuant to section 4(a)(1)(C) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1623(A)(1)(C).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 individual respondents will complete the application, and that the amount of time estimated for an average respondent to reply is approximately two hours each.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 1,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407–B, Washington, DC 20530.

Dated: August 29, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–21431 Filed 9–3–13; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities; Proposed New Collection; Comments Requested: Office of Community Oriented Policing Services, Police-Led Diversion Programs; National Prevalence and Scope

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a previously approved information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 128, page 40175 on July 3, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 4, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed new collection; comments requested.

(2) *Title of the Form/Collection:* Police-Led Diversion Programs: National Prevalence and Scope.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies through a nationally representative sample may be asked to provide information to determine the national prevalence of police-led diversion programs and provide a portrait of their goals, target populations, and policies. Through a cooperative agreement with the COPS Office, the Center for Court Innovation (CCI, Inc.) will create a representative sample of law enforcement agencies based on data available through the FBI Uniform Crime Reporting. CCI will subcontract

with a professional survey research firm to administer the survey.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,600 respondents annually will complete the form in approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,600 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407–B, Washington, DC 20530.

Dated: August 29, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–21447 Filed 9–3–13; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act (CAA)

Notice is hereby given that on August 29, 2013, a proposed consent decree (''proposed Decree'') in *United States and the People of the State of California ex rel. California Air Resources Board* v. *MotorScience Enterprises, Inc., MotorScience, Inc. and Chi Zheng,* C.A. No. 1:11–cv–08023 GHK was lodged with the United States District Court for the Central District of California.

In this action brought by the United States under Sections 203(a) and 213(d) of the CAA, 40 U.S.C. 7522(a), 7547(d) and brought by the People of the State of California ex rel. California Air Resources Board (''ARB'') under the California Health and Safety Code section 43151, the Plaintiffs sought injunctive relief against the Defendants MotorScience Enterprises, Inc., MotorScience, Inc. and Chi Zheng, individually, for alleged violations arising from Defendants' motor vehicle consulting business relating to the preparation and submission of applications for certificates of conformity from the United States Environmental Protection Agency (U.S. EPA) and executive orders from ARB. The Consent Decree requires Defendants to undertake injunctive relief to improve the accuracy and reliability of the applications they prepare on behalf of manufacturers and importers of motor vehicles, particularly nonroad (or recreational) vehicles and nonroad engines, and to improve their recordkeeping practices. Additionally, under the Consent Decree Defendants have agreed to have a stipulated judgment entered against them for $3,550,000 in civil penalties, and to pay an additional $60,000 civil penalty within six months. The United States will receive 80 percent of the collected penalties, and California ARB will receive the remaining 20 percent.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Deputy Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the People of the State of California ex rel. California Air Resources Board* v. *MotorScience Enterprises, Inc., MotorScience, Inc. and Chi Zheng,* C.A. No. 1:11–cv–08023 GHK, D.J. Ref. No. 90–5–2–1–10209. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Deputy Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $14.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Chief Management, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–21455 Filed 9–3–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

On August 28, 2013 the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of Illinois in the lawsuit entitled *United States* v. *The Sherwin-Williams Company,* Civil Action No. 3:13cv03304.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The complaint requests recovery of costs that the United States incurred and/or will incur in the future responding to releases of hazardous substances at the Eagle Zinc Superfund Site in Montgomery County, Illinois. The Sherwin-Williams Company agrees to pay $1,350,000 of the United States' response costs. In return, the United States agrees not to sue the defendants under sections 106 and 107 of CERCLA or under section 7003 of the Resource Conservation and Recovery Act (RCRA).

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *The Sherwin-Williams Company,* D.J. Ref. No. 90–11–3–08502/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail ..	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Chief Management, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–21452 Filed 9–3–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,375]

Apex Tool Group, LLC; Gastonia Operation Division; Including On-Site Leased Workers From Adecco USA, Aerotek Commercial Staffing and IDG USA, LLC; Gastonia, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 27, 2013, applicable to workers of Apex Tool Group, LLC, Gastonia operation Division, including on-site leased workers from Adecco USA and Aerotek Commercial Staffing, Gastonia, North Carolina. The workers are engaged in activities related to the production of mechanic's hand tool sets. The notice was published in the **Federal Register** on March 26, 2013 (78 FR 18367).

Based on information obtained during a pending investigation for TA–W–82,881, the Department reviewed the certification for workers of the subject firm. New information from the company shows that workers leased from IDG USA, LLC were employed on-site at the Gastonia Operation Division of Apex Tool Group, LLC, Gastonia, North Carolina. The Department has determined that these workers were sufficiently under the control of Apex Tool Group, LLC, Gastonia Operation Division to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of mechanic's hand tool sets to a foreign country.

Based on these findings, the Department is amending this certification to include workers leased from IDG USA, LLC working on-site within the Gastonia Operation Division at the Gastonia, North Carolina location of the subject firm.

The amended notice applicable to TA–W–82,375 is hereby issued as follows:

''All workers from Apex Tool Group, LLC, Gastonia Operation Division, including on-site leased workers from Adecco USA, Aerotek Commercial Staffing, and IDG USA, LLC, Gastonia, North Carolina, who became totally or partially separated from employment on or after January 25, 2012, through February 27, 2015, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed at Washington, DC this 16th day of August, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–21425 Filed 9–3–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,165D]

Interstate Brands Corporation (IBC); a Wholly Owned Subsidiary of Hostess Brands, Inc.; Including On-Site Leased Workers From Cortech, LLC; Operating at Locations Throughout the State of Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 2013, applicable to workers of Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Arkansas (TA–W–82,165D). The Department's notice of determination was published in the **Federal Register** on February 25, 2013 (78 FR 12795).

At the request of a state workforce office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of baked goods such as bread, buns, rolls, snack cakes, doughnuts, sweet rolls and similar products.

The company reports that workers leased from CorTech, LLC were employed on-site at the West Helena, Arkansas location of Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc.. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from CorTech, LLC working on-site at the West Helena, Arkansas location of Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc.

The amended notice applicable to TA–W–82,165 is hereby issued as follows:

''All workers of Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Michigan (TA–W–82,165); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Alabama (TA–W–82,165A); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Alaska (TA–W–82,165B); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Arizona (TA–W–82,165C); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from CorTech, LLC, operating at locations throughout the state of Arkansas (TA–W–82,165D); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of California (TA–W–82,165E), excluding workers of Hostess Brands, Inc., field accounting organization, Sacremento, California (TA–W–81,029S); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Professional Drivers of Georgia, Inc. dba Prodrivers, operating at locations throughout the state of Colorado (TA–W–82,165F); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Connecticut (TA–W–82,165G); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Delaware (TA–W–82,165H); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Florida (TA–W–82,165I) excluding workers of Hostess Brands, Inc., field accounting organization, Jacksonville, Florida (TA–W–81,029P) and Orlando, Florida (TA–W–81,029R); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Georgia (TA–W–82,165J) excluding workers of Hostess Brands, Inc., field accounting organization,

Columbus, Georgia (TA–W–81,029Q); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Idaho (TA–W–82,165K); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Stivers Temporary Personnel, operating at locations throughout the state of Illinois (TA–W–82,165L) excluding workers of Hostess Brands, Inc., field accounting organization, Hodgkins, Illinois (TA–W–81,029A) and Peoria, Illinois (TA–W–81,029B); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Indiana (TA–W–82,165M) excluding workers of Hostess Brands, Inc., field accounting organization, Indianapolis, Indiana (TA–W–81,029J); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Iowa (TA–W–82,165N) excluding workers of Hostess Brands, Inc., field accounting organization, Davenport, Iowa (TA–W–81,029C); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Anytime Labor KC Metro, LLC, and The Arnold Group, operating at locations throughout the state of Kansas (TA–W–82,165O) excluding workers of Hostess Brands, Inc., field accounting organization, Emporia, Kansas (TA–W–81,029I); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Professional Drivers of Georgia, Inc. dba Prodrivers, operating at locations throughout the state of Kentucky (TA–W–82,165P); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Louisiana (TA–W–82,165Q) excluding workers of Hostess Brands, Inc., field accounting organization, Alexandria, Louisiana (TA–W–81,029D); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Maine (TA–W–82,165R) excluding workers of Hostess Brands, Inc., field accounting organization, Biddford, Maine (TA–W–81,029F); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Maryland (TA–W–82,165S); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Massachusetts (TA–W–82,165T); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Minnesota (TA–W–82,165U); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Mississippi (TA–W–82,165V); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Great Plains Technical Services, Ridgway's, LLC (ARC), Synergy Staffing Services, LLC., KForce Professional Staffing, and Accenture, LLP (including subcontractors), operating at locations throughout the state of Missouri (TA–W–82,165W) excluding workers of Hostess Brands, Inc., field accounting organization, St. Louis, Missouri (TA–W–81,029); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Bookkeeping By Design, operating at locations throughout the state of Montana (TA–W–82,165X) excluding workers of Hostess Brands, Inc., field accounting organization, Billings, Montana (TA–W–81,029T); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Nebraska (TA–W–82,165Y); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Nevada (TA–W–82,165Z); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of New Hampshire (TA–W–82,165AA); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of New Jersey (TA–W–82,165BB); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of New York (TA–W–82,165CC); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of North Carolina (TA–W–82,165DD) excluding workers of Hostess Brands, Inc., field accounting organization, Rocky Mount, North Carolina (TA–W–81,029M); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of North Dakota (TA–W–82,165EE); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Ohio (TA–W–82,165FF) excluding workers of Hostess Brands, Inc., field accounting organization, Cincinnati, Ohio (TA–W–81,029E) and Northwood, Ohio (TA–W–81,029L); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Oklahoma (TA–W–82,165GG) excluding workers of Hostess Brands, Inc., field accounting organization, Tulsa, Oklahoma (TA–W–81,029H); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Oregon (TA–W–82,165HH); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Randstad Professional LP (Accounts International), operating at locations throughout the state of Pennsylvania (TA–W–82,165II) excluding workers of Hostess Brands, Inc., field accounting organization, Philadelphia, Pennsylvania (TA–W–81,029K); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Rhode Island (TA–W–82,165JJ); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of South Carolina (TA–W–82,165KK); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of South Dakota (TA–W–82,165LL); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from Stinson Industrial Maintenance, operating at locations throughout the state of Tennessee (TA–W–82,165MM) excluding workers of Hostess Brands, Inc., field accounting organization, Knoxville, Tennessee (TA–W–81,029N) and Memphis, Tennessee (TA–W–81,029O); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., including on-site leased workers from The Insource Group, and Accenture LLP, operating at locations throughout the state of Texas (TA–W–82,165NN); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Utah (TA–W–82,165OO) excluding workers of Hostess Brands, Inc., field accounting organization, Odgen, Utah (TA–W–81,029G); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Vermont (TA–W–82,165PP); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Virginia (TA–W–82,165QQ); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Washington (TA–W–82,165RR) excluding workers of Hostess Brands, Inc., field accounting organization, Lakewood, Washington (TA–W–81,029U); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of West Virginia (TA–W–82,165SS); Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Wisconsin (TA–W–82,165TT), and Interstate Brands Corporation (IBC), a wholly owned subsidiary of Hostess Brands, Inc., operating at locations throughout the state of Wyoming (TA–W–82,165UU), who became totally or partially separated from employment on or after November 19, 2012, through February 19, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 19th day of August, 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–21427 Filed 9–3–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,326; TA–W–82,326A]

YP Western Directory LLC, San Francisco Division, Publishing Operations Group, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC, Including On-Site Leased Workers From Zero Chaos, San Francisco, California; YP Western Directory LLC, San Francisco Division, Publishing Operations Group, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC, Including On-Site Leased Workers From Zero Chaos, Pleasanton, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2013, applicable to workers of YP Western Directory LLC, San Francisco Division, Publishing Operations Group, YP Subsidiary Holdings LLC, PY LLC, YP Holdings LLC, including on-site leased workers from Zero Chaos, San Francisco, California. The workers are engaged in activities related to the supply of publishing operations services. Workers within the Publishing Operations Group are separately identifiable from other business units within YP Western Directory LLC, Therefore, the certification is limited to only those workers within the Publishing Operations Group who are located at (or report to) San Francisco, California. The notice was published in the **Federal Register** on February 25, 2013 (78 FR 12796).

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that Pleasanton, California is a sister facility of the San Francisco, California location of the subject firm. Both facilities are engaged in activities related to the supply of publishing operations services, and have experienced worker separations during the relevant time period due to a shift in these services to a foreign country.

Accordingly, the Department is amending the certification to include workers of the Pleasanton, California location of YP Western Directory LLC.

The amended notice applicable to TA–W–82,326 is hereby issued as follows:

''All workers of YP Western Directory LLC, San Francisco Division, Publishing Operations Group, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC, including on-site leased workers from Zero Chaos, San Francisco, California (TA–W–82,326), and YP Western Directory LLC, San Francisco Division, Publishing Operations Group, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC, including on-site leased workers from Zero Chaos, Pleasanton, California (TA–W–82,326A), who became totally or partially separated from employment on or after January 8, 2012, through February 13, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended,''

Signed in Washington, DC, this 22nd day of August 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–21424 Filed 9–3–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,379]

Abbott Laboratories; Diagnostic—Hematology; Including On-Site Leased Workers From Manpower Service Group and ATR International; Santa Clara, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 22, 2013, applicable to workers of Abbott Laboratories, Diagnostic—Hematology division, including on-site leased workers from Manpower Service Group, Santa Clara, California. The Department's notice of determination was published in the **Federal Register** on March 8, 2013 (78 FR 15050).

At the request of the U.S. Department of Labor, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of hematology reagents and instruments.

The company reports that workers leased from ATR International were employed on-site at the Santa Clara, California location of Abbott Laboratories, Diagnostic—Hematology Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from ATR International working on-site at the Santa Clara, California location of Abbott Laboratories, Diagnostic—Hematology division.

The amended notice applicable to TA–W–82,379 is hereby issued as follows:

''All workers of ATR International, reporting to Abbott Laboratories, Diagnostic—Hematology division, including on-site leased workers from Manpower Service Group, Santa Clara, California, who became totally or partially separated from employment on or after January 28, 2012, through February 22, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 21st day of August, 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–21426 Filed 9–3–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of August 12, 2013 through August 16, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,895	Sanmina Corporation, SGS Division	Louisville, CO	June 19, 2012.
82,951	ABB, Inc., Power Products Division, Pontoon Solutions	St. Louis, MO	July 30, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,727	Lexmark International, Inc., Imaging Services and Solutions, Embedded Systems Scan, Allegis Group.	Lexington, KY	September 11, 2012.
82,884	Integrity Solutions Services, Inc.	Decorah, IA	July 3, 2012.
82,887	Brown Jordan Company, Brown Jordan International, IN Staff, Office Team, and Seven Others.	El Monte, CA	July 8, 2012.
82,916	Motorola Solutions, Inc., GDH Consulting, Inc.	Louisville, KY	July 18, 2012.
82,928	Doe Run Resources Corporation (The), Herculaneum Smelting, DR Acquisition, Total Electric, Lee Mechanical, etc..	Herculaneum, MO	July 23, 2012.
82,945	Illinois Tool Works (ITW), Paslode Division, Hamilton-Ryker	Covington, TN	July 30, 2012.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
82,877	Avaya, Inc., Avaya Client Services, Strategy and Operations	Basking Ridge, NJ	
82,882	Southern New England Telephone Company (The), AT&T, Inc., Customer Info. Service Business Unit, White Pages.	New Haven, CT.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,865	HaloSource, Inc., Express Employment	Raymond, WA	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,594	BioTec Industries, Inc.	Newton, NC	
82,829	BT Conferencing, Inc., BT Group PLC, Manpower and Tech Mahindra	Quincy, MA	
82,855	Spartanburg Automotive, Inc., A Spartanburg Steel Products Company, Aerotek.	Spartanburg, SC	
82,868	Americanos USA, LLC, Autobuses Americanos, Greyhound Lines	El Paso, TX	
82,890	YP Southeast Advertising & Publishing LLC, Customer Service Group, YP LLC, YP Holdings LLC.	Tucker, GA	
82,901	Kids Supercenter LLC	El Paso, TX	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
82,881	IDG USA, LLC, Industrial Distribution Group, Apex Tool Group, Gastonia Operation Division.	Gastonia, NC	
82,923	Axa Equitable Life Insurance Company, Axa Financial, Inc., Benefits, Payment and Accounting Group.	Syracuse, NY	
82,947	GCA Services Group, Working On-Site at Regal Beloit	Springfield, MO	

I hereby certify that the aforementioned determinations were issued during the period of August 12, 2013 through August 16, 2013. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 22nd day of August 2013.

Michael W. Jaffe

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–21429 Filed 9–3–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 16, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 16, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of August 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

APPENDIX

[31 TAA petitions instituted between 8/12/13 and 8/16/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82968	Zila, Inc. (State/One-Stop)	Batesville, AR	08/13/13	08/08/13
82969	GE Healthcare IITS USA Corp HHS Divsion (State/One-Stop).	Seattle, WA	08/13/13	08/08/13
82970	Trek Bicycles (State/One-Stop)	Waterloo, WI	08/13/13	08/12/13
82971	Hartford Financial Services Group, Inc. (State/One-Stop)	Hartford, CT	08/13/13	08/12/13
82972	John Wiley & Sons, Inc. (Workers)	Indianapolis, IN	08/13/13	08/09/13
82973	WildBrain DHX Entertainment (State/One-Stop)	Sherman Oaks, CA	08/13/13	08/09/13
82974	Schneider Electric (Company)	Loves Park, IL	08/13/13	08/07/13
82975	Systems & Services Technologies (Workers)	St. Joseph, MO	08/13/13	08/09/13
82976	CQ Sourcing, Warehouse Division (Workers)	New Castle, IN	08/13/13	08/12/13
82977	Pall Corporation (State/One-Stop)	Port Washington, NY	08/13/13	08/12/13
82978	Belldini (State/One-Stop)	Los Angeles, CA	08/13/13	08/12/13
82979	Cardionet (Workers)	Conshohocken, PA	08/13/13	08/09/13
82980	Sunrise Medical (Company)	Fresno, CA	08/13/13	08/09/13
82981	Arris/Motorola Home (State/One-Stop)	Libertyville, IL	08/13/13	08/12/13
82982	Gates Corporation—Ashe County incl. Kelly Services (Company).	Jefferson, NC	08/13/13	08/12/13
82983	Parker Hannifin Corporation, Parker Medical Systems Division (Workers).	Fontana, CA	08/13/13	08/09/13
82984	The Berry Company, LLC (State/One-Stop)	Rochester, NY	08/13/13	08/09/13
82985	RR Donnelley (State/One-Stop)	Jefferson City, MO	08/14/13	08/09/13
82986	McDermott International (State/One-Stop)	Morgan City, LA	08/14/13	08/13/13
82987	Honeywell Inc (Workers)	Phoenix, AZ	08/14/13	08/13/13
82988	RadiSys Corporation (Company)	Hillsboro, OR	08/14/13	08/12/13
82989	Ricon Corporation (Company)	Panorama City, CA	08/14/13	08/13/13
82990	Prudential Financial (Workers)	Dresher, PA	08/14/13	07/31/13
82991	Bausch & Lomb (Workers)	Rochester, NY	08/14/13	08/08/13
82992	The Electric Materials Company (Company)	North East, PA	08/15/13	08/14/13
82993	Welch Allyn (Company)	Beaverton, OR	08/15/13	08/14/13
82994	Liberty Tire Recycling, LLC (Workers)	Braddock, PA	08/15/13	08/14/13
82995	King Brothers Woodworking (State/One-Stop)	Union Gap, WA	08/16/13	08/15/13
82996	Pratt & Whitney (State/One-Stop)	East Hartford, CT	08/16/13	08/15/13
82997	H&T Waterbury, Inc. (Company)	Waterbury, CT	08/16/13	08/15/13
82998	Innovative Dental (Company)	Reno, NV	08/16/13	08/15/13

[FR Doc. 2013–21428 Filed 9–3–13; 8:45 am]
BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2013–043]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 4, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: *request.schedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Commissary Agency (DAA–0506–2013–0001, 6 items, 6 temporary items). Correspondence, permits, surveys, and other records relating to administration of supplemental nutrition assistance programs at commissaries.

2. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0013, 2 items, 1 temporary item). Master files of an electronic information system used to support studies pertaining to chronic medical conditions. Proposed for permanent retention are public use versions of the files.

3. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0014, 1 item, 1 temporary item). Master files of an electronic information system used to demonstrate payment processing for accountable care organizations.

4. Department of Labor, Office of the Solicitor (DAA–0174–2013–0006, 9 items, 7 temporary items). Records include litigation case files, advice and opinion files, rulemaking records, correspondence, working files, and tracking systems. Proposed for permanent retention are historically significant litigation case and advice files and historically significant records documenting the activities of the Solicitor.

5. Department of the Navy, U.S. Marine Corps (DAA–0127–2012–0005, 8 items, 8 temporary items). Inputs, outputs, and master files of an electronic information system used to track and manage ammunition supply.

6. Department of the Navy, U.S. Marine Corps (DAA–0127–2012–0006, 1 item, 1 temporary item). Master files of an electronic information system used to track and control access to Marine Corps installations.

7. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0015, 1 item, 1 temporary item). Master files of an electronic information system used for financial management including vouchers, inventory, and purchasing.

8. Department of Transportation, Federal Railroad Administration (DAA–

0399–2013–0003, 4 items, 2 temporary items). Publication working papers and routine promotional items. Proposed for permanent retention are mission-related publications and promotional items.

9. Department of Transportation, Federal Railroad Administration (DAA–0399–2013–0004, 8 items, 5 temporary items). Records include internal memorandums, unpublished directives, work files, and unimplemented organization plans. Proposed for permanent retention are published directives, high-level delegations of authority, and reports on implemented organization plans.

10. Department of Transportation, Federal Railroad Administration (DAA–0399–2013–0005, 6 items, 4 temporary items). Records related to grants and loans including cooperative agreements, interagency agreements, and approved and denied loan applications. Proposed for permanent retention are approved Amtrak grants, national agreements, and bilateral agreements.

11. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DAA–0571–2012–0001, 1 item, 1 temporary item). Master files of an electronic information system used to track daily business transactions.

12. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (N1–571–12–1, 4 items, 2 temporary items). Petitions for rulemaking and rulemaking working papers. Proposed for permanent retention are rulemaking dockets and regulation interpretations.

13. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DAA–0571–2012–0002, 1 item, 1 temporary item). Master files of an electronic information system used to collect and monitor information on pipeline safety.

14. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DAA–0571–2013–0001, 10 items, 5 temporary items). Records include incident reports, annual reports, exemption files, and working files. Proposed for permanent retention are rulemaking and petition files, regulation interpretation files, significant incident reports, and advisory committee files.

15. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DAA–0571–2013–0002, 6 items, 6 temporary items). Records relating to grants, certifications, compliance, and emergency preparedness and response plans.

16. Department of the Treasury, Departmental Offices (N1–56–09–7, 8 items, 6 temporary items). Master files of an electronic information system that collects and maintains information on international portfolio investment flows. Proposed for permanent retention are annual reports of this information.

17. Administrative Office of the United States Courts, District Courts of the United States (DAA–0021–2013–0004, 3 items, 2 temporary items). Notes and recordings of criminal cases not involving capital punishment. Proposed for permanent retention are notes and recordings of cases involving capital punishment.

18. Administrative Office of the United States Courts, United States Bankruptcy Courts (DAA–0578–2013–0001, 2 items, 1 temporary item). Records relating to miscellaneous proceedings not specifically part of a bankruptcy case or adversary proceeding. Proposed for permanent retention are records of attorney disbarment proceedings.

19. Consumer Financial Protection Bureau, Office of Consumer Response (N1–587–12–5, 11 items, 11 temporary items). Records include routine correspondence, internal presentation records, training and procedure records, working papers, and consumer complaint records.

20. Environmental Protection Agency, Agency-wide (DAA–0412–2013–0020, 4 items, 4 temporary items). Records related to financial planning.

21. National Archives and Records Administration, Research Services (N2–59–13–1, 1 item, 1 temporary item). Records of the Department of State comprising one box of top secret cover sheets to which the related records are not attached. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

Dated: August 28, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–21472 Filed 9–3–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 4, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. Applicant

Permit Application: 2014–011
Michael Studinger,
NASA Goddard Flight Center,
Cryospheric Sciences Lab,
Greenbelt MD.

Activity for Which Permit Is Requested

ASPA Entry; NASA is mapping the ice in Antarctica using instruments mounted on airplanes and will continue to map the ice from satellites. The instruments must be calibrated by flying an airplane over ice free ground. The McMurdo Dry Valleys are the largest ice- and vegetation-free area on Earth, and these factors, combined with their proximity to the world's largest ice sheet, their relative surface stability and their range of surface slopes make them an ideal site for the calibration of satellite laser altimeters. NASA has selected a calibration site comprised mainly of the junction of portions of the Wright, Victoria, McKelvey and Barwick Valleys. This is the widest area of the Dry Valleys along the direction of travel of the spacecraft's ground track, and it contains a range of surface

characteristics (mainly slope) making it very suitable for calibrating the laser altimeters that will be on NASA's ICESat–2.

The desired flight lines cross small portions of the Barwick Valley Antarctic Specially Protected Area, and the management prohibits overflight at altitudes less than 2500 ft. NASA is seeking a permit to fly through ASPA 123 six times at an altitude of 1500 ft. or higher. While flying over the ASPA, NASA will be using airplane mounted instruments to collect laser, radar, gravity, and magnetic data and aerial photography. There is no plan to land the aircraft in the ASPA and data collection would not disturb the ground surface in the ASPA.

Location

ASPA 123 Barwick and Balham Valleys

Dates

October 26, 2013 to November 30, 2013

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–21444 Filed 9–3–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0094]

Report to Congress on Abnormal Occurrences: Fiscal Year 2012, Revision 1; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) defines an abnormal occurrence (AO) as an unscheduled incident or event that the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–68) requires that AOs be reported to Congress annually. During Fiscal Year (FY) 2012, 22 events that occurred at facilities licensed by the NRC and/or Agreement States were determined to be AOs.

This report describes four events at NRC-licensed facilities. The first event at an NRC-licensed facility was an occurrence at a commercial nuclear power plant and the other three events occurred at NRC-licensed medical institutions and are medical events as defined in part 35 of Title 10 of the *Code of Federal Regulations* (10 CFR). The report also describes 18 events at Agreement State-licensed facilities. Agreement States are the 37 States that currently have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act (AEA) to regulate certain quantities of AEA-licensed material at facilities located within their borders. The first Agreement State-licensee event involved radiation exposure to an embryo/fetus, and the second event involved an exposure to a radiographer. The other 16 Agreement State-licensee events were medical events as defined in 10 CFR part 35 and occurred at medical institutions. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the actions taken to prevent recurrence. Each event is also described in NUREG–0090, Volume 35, ''Report to Congress on Abnormal Occurrences: Fiscal Year 2012,'' issued May 2013 (ADAMS Accession No. ML13149A083). The report was revised to include editorial corrections and reissued in August 2013 as NUREG–0090, Volume 35, Revision 1, ''Report to Congress on Abnormal Occurrences: Fiscal Year 2012'' (ADAMS Accession No. ML13225A395). This report is available electronically at the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/.*

Three major categories of events are reported in this document—I. For All Licensees, II. For Commercial Nuclear Power Plant Licensees, and III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events. The full report, which is available on the NRC's Web site, provides the specific criteria for determining when an event is an AO. It also discusses ''Other Events of Interest,'' which do not meet the AO criteria but have been determined by the Commission to be included in the report. The event identification number begins with ''AS'' for Agreement State AO events and ''NRC'' for NRC AO events.

I. For All Licensees

A. Human Exposure to Radiation From Licensed Material

During this reporting period, two events involving Agreement State-licensees were significant enough to be reported as AOs. Although one of these events occurred at a medical facility, it involved unintended exposure of an individual who was not the patient. Therefore, this event belongs under the Criterion I.A, ''For All Licensees'' category, as opposed to the Criterion III.C, ''Medical Licensees'' category.

AS12–01 Embryo/Fetus Exposure to Radiation at Lankenau Hospital in Wynnewood, Pennsylvania

Date and Place—October 6, 2011, Wynnewood, PA.

Nature and Probable Consequences—Lankenau Hospital (the licensee) reported that a patient received 2.7 gigabecquerel (GBq) (73.7 millicuries (mCi)) of iodine-131 for thyroid ablation therapy. Before the treatment, the patient informed the licensee that she was not pregnant, and was administered a pregnancy test as a routine precaution. The pregnancy test yielded a negative result. Therefore, the licensee administered iodine-131 to the patient.

On October 26, 2011, the patient became aware that she was pregnant. The licensee contacted the patient's obstetrician/gynecologist and was informed that an ultrasound confirmed that she was approximately 10 days pregnant at the time of the iodine-131 treatment. The NRC contracted a medical consultant, who estimated a fetal or embryo dose of 174 mSv (17.4 rem) and stated that embryonic tissue capable of concentrating iodine-131 is not formed until 10 to 12 weeks of gestation; therefore, this tissue had not yet formed at the time of the treatment. The medical consultant concluded that there was a low possibility of carcinogenesis or malformations.

Cause(s)—The cause of this event was the inability of the pregnancy test to provide a positive determination of pregnancy in close proximity to conception.

Actions Taken To Prevent Recurrence

Licensee—The licensee assessed the event and determined that it is following best practices by ordering a pregnancy test and relying on its results.

State—The Pennsylvania Department of Environmental Protection (PA DEP) conducted a followup inspection to review this incident and collect information from the medical consultant and the licensee to complete this review. PA DEP has no further action planned for this event.

AS12–02 Human Exposure to Radiation at Non-Destructive Inspection Corporation, in Pasadena, Texas

Date and Place—March 24, 2012, Pasadena, TX.

Nature and Probable Consequences—The Non-Destructive Inspection Corporation (the licensee) reported that a radiographer received a total effective dose equivalent (TEDE) of 293.2 mSv (29.3 rem). The licensee reported that the drive cable of a radiography camera containing 2.41 terabecquerels (TBq)

(65.1 curies (Ci)) of iridium-192 broke, and the source pigtail disconnected from the drive cable inside the source guide tube. The radiographer trainer disconnected the source guide tube from the exposure device and placed it around his neck while he climbed down the ladder of a scaffold. The source was in the guide tube at that time, but its location within the guide tube is uncertain. When the radiographer trainer reached the platform he removed the guide tube from his neck. He then noted that the other radiographer was having problems disconnecting the crank assembly from the exposure device and that the exposure device locking mechanism was still unlocked.

Radiation surveys were performed of the exposure device and source guide tube. Radiation levels revealed that the source was within the guide tube. The radiographer trainer picked up the guide tube with long tongs and the source fell out of the guide tube onto the floor. An authorized individual responded to the site and performed source retrieval. The radiographer trainer's film badge was processed and read 0.812 mSv (81.2 mrem). During event reenactment, it was determined that the source guide tube was around the radiographer trainer's neck for approximately 35 seconds. The licensee calculated and assigned an estimated TEDE dose of 293.2 mSv (29.3 rem). The event was reported as a Level 2 (incident) on the International Atomic Energy Agency's International Nuclear and Radiological Event Scale (INES).

Cause(s)—The cause of this event was corrosion of the drive cable and improper maintenance coupled with the failure of the operators to perform the proper radiation surveys.

Actions Taken To Prevent Recurrence

Licensee—The corrective action taken by the licensee included a complete cessation of operations and review of the incident with every radiographer in the company; and an inspection of all of the licensee's equipment, with replacement as needed. The radiographer trainer was retrained and re-tested. The licensee stated it will incorporate routine equipment maintenance and inspections performed by the manufacturer.

State—The Texas Department of State Health Services (DSHS) collected information from the licensee, including medical surveillance information, and completed its review of the event and the licensee's corrective actions. The DSHS cited both the licensee and radiographer trainer with several violations associated with this event.

II. Commercial Nuclear Power Plant Licensees

During this reporting period, one event at a commercial nuclear power plant in the United States was significant enough to be reported as an AO.

NRC12–01 Commercial Nuclear Power Plant Event at Fort Calhoun Station, Unit 1, in Fort Calhoun, Nebraska

Date and Place—June 7, 2011, Fort Calhoun, NE.

Nature and Probable Consequences—The Omaha Public Power District (OPPD) (the licensee) reported a commercial nuclear power plant event at Fort Calhoun Station (FCS), Unit 1, a single pressurized-water reactor designed by Combustion Engineering. On June 7, 2011, a fire started in a recently replaced safety-related electrical breaker in an electrical switchgear room at the plant. The fire resulted in FCS declaring an alert because the fire impacted safety-related equipment. The catastrophic failure of the replacement breaker and subsequent fire resulted in a large quantity of soot and smoke. The soot and smoke were sufficiently conductive that arcing occurred and the feeder breaker for the redundant train of electrical switchgear tripped. Operators took action to isolate equipment potentially affected by the fire. The event resulted in the loss of the spent fuel pool cooling function and could have resulted in the loss of a safety function or multiple failures in systems used to mitigate an event had the event occurred while the plant was operating at power. The reactor was shutdown at the time of the fire.

The NRC determined that the event represented a finding of high safety significance (red finding). The basis for this determination was the high fire frequency given the short period of time that the replacement breaker had been in service, the significant damage caused by the failure, and the fact that the event affected both trains of safety equipment. The public was never endangered because the plant was in cold shutdown for a planned refueling outage at the time of the fire. Significantly less safety equipment is required in this plant condition to safely cool the fuel. However, had this event occurred while the plant was operating at power, the response to the event would have been much more complex.

Cause(s)—The direct cause of the fire was the high electrical resistance of the replacement breaker and the lack of proper cleaning and tightening of the electrical switchgear. Additionally, the area of the electrical connection was found to be full of hardened grease and copper oxide because of poor electrical maintenance practices by the licensee.

Actions Taken To Prevent Recurrence

Licensee—As a result of the event and other factors, OPPD has maintained FCS in a shutdown condition. Through its root cause analysis process, the licensee preliminarily determined that a wiring discrepancy caused the fire to spread to the opposite safety-related electrical train. The licensee also performed checks to ensure the wiring discrepancy is no longer present in the plant on the replacement equipment or other similar equipment.

NRC—The NRC transitioned FCS oversight from that described in Inspection Manual Chapter (IMC) 0305, ''Operating Reactor Assessment Program,'' to that described in IMC 0350, ''Oversight of Reactor Facilities in a Shutdown Condition due to Significant Performance and/or Operational Concerns.'' The IMC 0350 process for FCS was implemented to:

- Establish a regulatory oversight framework as a result of significant performance problems and a significant operational event.
- Ensure the NRC communicates a unified and consistent position in a clear and predictable manner.
- Establish a record of actions taken and technical issues resolved.
- Verify that corrective actions are sufficient for restart.
- Provide assurance that, following restart, the plant will be operated in a manner that provides for adequate protection of public health and safety.

On February 26, 2013, the NRC issued a revised Confirmatory Action Letter (CAL) (EA–13–020) ''Confirmatory Action Letter—Fort Calhoun Station,'' (available at the NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML13057A287) to confirm those actions that the NRC determined will need review or inspection before the restart of the plant. This revision supplemented two previously issued confirmatory action letters (ADAMS Accession Nos. ML112490164 and ML12163A287) that confirmed actions that were necessary prior to restart. This revision was issued to incorporate three additional items to the Restart Checklist, that relate to (1) qualifications for containment electrical penetrations, (2) containment internal structure deficiencies, and (3) a number of safety system functional failures resulting in the associated performance indicator crossing into the white threshold. Prior to the NRC terminating the CAL and allowing FCS to restart, the NRC will verify that the licensee's

corrective actions adequately address all of the items detailed on the restart checklist.

III. Events At Facilities Other Than Nuclear Power Plants and All Transportation Events

C. Medical Licensees

During this reporting period, three events at NRC licensees and 16 events at Agreement State-licensees were significant enough to be reported as AOs.

AS12–03 Medical Event at Greenville Memorial Hospital in Greenville, South Carolina

Date and Place—September 15, 2009, Greenville, SC.

Nature and Probable Consequences—Greenville Memorial Hospital (the licensee) reported that a medical event occurred associated with a radioembolization brachytherapy treatment for liver cancer involving 1.7 GBq (45.9 mCi) of yttrium-90. The patient was prescribed to receive a total dose of approximately 13 Gy (1,300 rad) to the liver, but instead received a dose of approximately 26 Gy (2,600 rad) to the liver. This delivered dosage was approximately 100 percent greater than the prescribed dosage to the patient. The patient and referring physician were informed of this event.

On September 17, 2009, the licensee notified the South Carolina Department of Health and Environmental Control that following an infusion of radioactive yttrium-90, a postprocedure record review revealed that the patient was administered 1.7 GBq (45.9 mCi) of yttrium-90 versus the prescribed dose of 0.94 GBq (25.4 mCi). Upon investigation, it was discovered by the licensee that errors occurred both while preparing the treatment and estimating the activity from the written directive. Upon medical followup, the patient had good tumor response with no adverse medical effects.

Cause(s)—The cause of the medical event was human error in failing to administer the correct activity as stated on the written directive.

Actions Taken To Prevent Recurrence

Licensee—The licensee corrective actions included: (1) Mandatory refresher training for all participants in this event, (2) implementation of a requirement to confirm the prescribed dose by two nuclear medicine technologists prior to administration, (3) implementation of a requirement for the written directive to be typed or printed with the dose amount highlighted, and (4) discussion of the event and corrective actions at the next meeting of the Radiation Safety Committee.

State—The South Carolina Department of Health and Environmental Control conducted an investigation on September 17, 2009, and determined that no items of non-compliance were noted. The State forwarded the final update of this event to the NRC on October 18, 2012.

AS12–04 Medical Event at the Duke University Medical Center in Durham, North Carolina

Date and Place—October 22, 2010, Durham, NC.

Nature and Probable Consequences—Duke University Medical Center (the licensee) reported that a medical event occurred associated with a high dose rate (HDR) endobronchial brachytherapy treatment for small cell lung cancer. The treatment involved the use of 199.8 GBq (5.4 Ci) of iridium-192 split between two treatment catheters. The patient was prescribed to receive two doses of 10 Gy (1,000 rad) for a total dose of 20 Gy (2,000 rad) to the tumor site. However, the direction of the catheters was reversed during treatment, resulting in a dose of 20 Gy (2,000 rad) to the voice box (wrong treatment site). The patient and referring physician were informed of this event.

On October 22, 2010, the medical staff initially identified the locations of the two treatment catheters using computed tomography (CT) images. During the treatment, the direction of the catheters was mistakenly reversed. This changed the starting position of the HDR source and resulted in the dose being delivered to the voice box rather than the targeted treatment site on the left side of the patient's airway. The patient exhibited minor swelling of the voice box, but no airway compromise, hoarseness, shortness of breath, or painful swallowing. The licensee concluded that the medical event would not have a significant medical effect on the patient. The patient was subsequently given the correct total dose in a followup treatment.

Cause(s)—The cause of the medical event was human error in that the oncology staff failed to correctly place and verify the position of the two treatment catheters. A contributing factor to the cause of the event is that the oncology staff infrequently uses two catheters to simultaneously deliver doses during HDR treatments.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included: (1) A root-cause analysis of the event, (2) development of a more detailed standard operational procedure for this type of treatment, (3) a revised HDR patient quality assurance form to include extra levels of verification, and (4) a new verification procedure. The licensee also provided training on the revised procedures for all radiation oncology staff approved to conduct HDR therapy.

State—The North Carolina Division of Radiation Protection conducted an investigation on December 14, 2010, and identified several procedural weaknesses in the licensee's HDR program. One item of noncompliance was issued and the State forwarded the final update of this event to the NRC on November 28, 2012.

AS12–05 Medical Events at Our Lady of Bellefonte Hospital in Ashland, Kentucky

Date and Place—October 3, 2001 through February 24, 2009 (reported on December 13, 2010), Ashland, KY.

Nature and Probable Consequences—The Kentucky Department of Public Health (KDPH) identified a medical event at Our Lady of Bellefonte Hospital (the licensee) associated with a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed to receive a total dose of 132.8 Gy (13,280 rad) to the prostate using 105 palladium-103 seeds, but instead the patient received an approximate dose of 131 Gy (13,100 rad) to the penile bulb (glans) (wrong treatment site). The patient and referring physician were not informed of this event because the licensee believed that the treatment was satisfactory. However, the patient was subsequently informed of this event during a consultation at another medical treatment facility.

The licensee was unable to perform a dose assessment of the affected tissue due to the radiation oncologist's inadequate postprocedure seed implant records. The patient sought a second opinion from a different radiation oncologist, who performed a CT scan of the treatment site. Based on the results of this CT scan, the second radiation oncologist determined that the penile bulb received the majority of the prescribed dose. On November 30, 2010, KDPH investigated this event and the licensee's entire prostate brachytherapy treatment program. The KDPH discovered 34 additional cases of improper prostate seed implantation performed by the same radiation oncologist between October 3, 2001, and February 24, 2009. The KDPH documented procedural violations by the radiation oncologist including written directives not containing the prescribed or delivered doses, no

records of postprocedure implant doses, and the lack of postprocedure CT scans.

Cause(s)—The cause of the medical events was human error in the failure of the radiation oncologist to follow the licensee's procedures and the failure of the licensee to maintain oversight of its brachytherapy program.

Actions Taken To Prevent Recurrence

Licensee—The corrective actions taken by the licensee included providing personnel with additional training, permanently suspending the brachytherapy program, and removing the radiation oncologist who performed the implant procedures from the license.

State—The KDPH conducted an extensive investigation from November 30, 2010 through November 2, 2012, and cited the licensee for numerous violations in the oversight of its manual brachytherapy program. Additionally, the Kentucky Medical Board investigated the radiation oncologist for infractions that resulted in rescinding the Kentucky medical license.

AS12–06 Medical Event at Banner Good Samaritan Medical Center in Phoenix, Arizona.

Date and Place—December 22, 2010, Phoenix, AZ

Nature and Probable Consequences—Banner Good Samaritan Medical Center (the licensee) reported that a medical event occurred associated with an HDR mammosite treatment for breast cancer, involving approximately 139.5 GBq (3.8 Ci) of iridium-192. The patient was prescribed to receive a total dose of 34 Gy (3,400 rad) in 10 fractionated doses to the left breast; however, on the ninth treatment, a kink in one of the catheters apparently caused the source to punch through the catheter and slide along the skin tissue of the left breast. The patient received a dose of 20 Gy (2,000 rad) to the skin of the left breast (wrong treatment site). The patient and referring physician were informed of this event.

In preparation for the seventh treatment, the licensee had difficulty in attaching the transfer tube to the HDR unit, and one catheter kinked. During attempts to straighten and re-attach the transfer tube, the catheter broke off completely. The licensee used a technique that it developed to repair the catheter and test its integrity since the manufacturer provides no specific recommendations on how to deal with damaged catheters. In addition, the licensee determined that repairing the catheter was the best option, versus risking the surgical procedure to replace the catheter. During the ninth treatment, the patient reported a sensation of electricity on her left breast during the positioning of the source in one of the catheters. The remaining catheter treatment was completed without further complaints by the patient and the sources were retracted into the normal shielded position. On January 3, 2011, the prescribing physician noted very faint erythema over the lumpectomy site and no evidence of erythema where the source had been in contact with the skin. Later ulcerations developed and healed without further complication. The licensee concluded that there did not appear to be any skin effects from the ruptured catheter, and the patient gradually improved over time.

Cause(s)—The cause of the medical event was a material problem with the repaired catheter and ineffective procedures for handling a damaged catheter.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions included changes to the licensee's procedures so that the entrance site and catheters will be visible by camera and that the treatment will be interrupted upon any abnormal observation or response from the patient. In addition, the licensee procedures were revised so that if kinking or damage to a catheter is observed and the catheter shows any signs of weakening, the device will be replaced.

State—The Arizona Radiation Regulatory Agency conducted an investigation and determined that the licensee's corrective actions were adequate. No enforcement action was taken, and the State forwarded the final update of the event to the NRC on May 1, 2012.

AS12–07 Medical Event at Highlands Regional Medical Center in Prestonsburg, Kentucky

Date and Place—March 17, 2009 (reported on January 14, 2011), Prestonsburg, KY.

Nature and Probable Consequences—The KDPH performed an inspection of Highlands Regional Medical Center (the licensee) manual brachytherapy program on January 14, 2011. The KDPH identified one of the licensee's authorized users, a radiation oncologist, who the KDPH investigated in prostate brachytherapy seed implant AO medical events at Our Lady of Bellefonte Hospital in Ashland, Kentucky (AS12–05). The KDPH discovered that on March 17, 2009, a patient prescribed to receive 100 Gy (10,000 rad) to the prostate instead received a dose of 160.8 Gy (16,080 rad). This delivered dosage was approximately 60 percent greater than the prescribed dosage to the patient. The KDPH documented procedural violations by the radiation oncologist including written directives not containing the prescribed or delivered doses, no records of postprocedure implant doses, and the lack of postprocedure CT scans. The patient and referring physician were not informed of this event because the licensee believed that the treatment was satisfactory.

The KDPH uncovered two additional improper prostate seed implantation events at the licensee's facility performed by the same radiation oncologist. These two additional events occurred between February 28, 2008, and April 3, 2008, and in both events the patients received less than the dose prescribed for the treatment. However, because of the radiation oncologist's inadequate postprocedure implantation records, final dose assessments of these events cannot be performed. The licensee's lack of oversight of the manual brachytherapy program caused these events to be undetected until the KDPH inspection.

Cause(s)—The cause of the medical event was human error in the failure of the radiation oncologist to follow the licensee's procedures and the failure of the licensee to maintain oversight of their brachytherapy program.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included providing personnel with additional training and removing the radiation oncologist who performed the implant procedures from the license. Additionally, the licensee's manual brachytherapy program has been suspended until the licensee can demonstrate complete regulatory oversight and compliance with Kentucky regulations.

State—The KDPH conducted an extensive investigation from January 14, 2011 through November 28, 2012, and cited the licensee for numerous violations in the oversight of its manual brachytherapy program. Additionally, the Kentucky Medical Board investigated the radiation oncologist for infractions that resulted in rescinding the Kentucky medical license.

AS12–08 Medical Event at Eastern Regional Medical Center in Philadelphia, Pennsylvania

Date and Place—January 19, 2011, Philadelphia, PA

Nature and Probable Consequences—Eastern Regional Medical Center (the licensee) reported that a medical event occurred associated with a radioembolization brachytherapy treatment for liver cancer involving 1.42

GBq (38.3 mCi) of yttrium-90. The patient was prescribed to receive a total dose of 117 Gy (11,700 rad) to the left lobe of the liver, but instead received an approximate dose of 257 Gy (25,700 rad). This delivered dosage was about 120 percent greater than the prescribed dosage. The patient and referring physician were informed of this event.

On January 19, 2011, during a formal review, the licensee noted that the activity delivered to the left lobe of the liver was different than the activity that was prescribed by the doctor. Upon investigation, it was determined that a transcription error occurred while preparing the order form. The error was not recognized upon receipt of the yttrium-90, because the received amount of yttrium-90 was compared to the amount listed on the order form rather than the amount prescribed on the written directive. The licensee concluded that this elevated dose may result in an increased risk of atrophy to the left lobe of the liver.

Cause(s)—The cause of the medical event was human error in failing to correctly transcribe the activity from the written directive to the order form.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included the generation of a computer spreadsheet that populates fields based on initial calculations, written directives and the order form. In addition, several procedure modifications were implemented to ensure the correct dosage is ordered and received.

State—The PA DEP conducted a reactive investigation on January 25, 2011, and identified one violation. The PA DEP inspectors determined that the licensee failed to implement the procedures developed to provide high confidence that each yttrium-90 microspheres treatment was in accordance with the written directive. Specifically, the licensee's staff did not verify that the activity determined with a dose calibrator was within 10 percent of the prescribed activity on the written directive, nor were the decay calculations used to check that the activity at the time of treatment was as prescribed on the written directive.

AS12–09 Medical Event at the University of Colorado Hospital in Aurora, Colorado

Date and Place—July 8, 2011, Aurora, CO

Nature and Probable Consequences—University of Colorado Hospital (the licensee) reported that a medical event occurred associated with a patient receiving treatment for Graves Disease. The patient was prescribed to receive a total dose of approximately 340 Gy (34,000 rad) to the thyroid gland using 740 MBq (20 mCi) of iodine-131, instead the patient received 3,748 MBq (101.3 mCi) of iodine-131 resulting in a dose of approximately 1,722 Gy (172,200 rad). This dosage was in excess of 400 percent greater than the prescribed dosage to the patient. The patient and referring physician were informed of this event.

On July 8, 2011, the licensee reported to the Colorado Department of Health that a patient received the wrong dose of iodine-131. The licensee stated that the authorized user (AU) reviewed the procedure with the patient and then left the written directive and all associated paperwork with the technologists. The technologist who was administering the iodine-131 to the patient incorrectly assumed that the patient was receiving treatment for cancer and did not review the written directive. The technologist then decided to use a therapeutic dosage of iodine-131, which was intended and labeled for another patient. The AU discovered this error later that day, when they attempted to administer the therapeutic dosage of iodine-131 to the intended patient. On November 10, 2011, and February 8, 2012, the licensee reported that the patient's thyroid function tests indicated a normal thyroid function with a small interval change suggesting the patient is becoming hypothyroid. The difference in the incorrectly administered iodine-131 dosage is expected to cause hypothyroidism in the patient and result in the patient needing replacement thyroid hormone therapy. A less likely possibility is that patient's hyperthyroidism will reoccur and will need an additional dose of iodine-131.

Cause(s)—The cause of the medical event was human error in that the technologist did not properly review the written directive and label on the iodine-131 dose.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included the immediate suspension of the technician from active duty and an investigation, followed by procedure additions—including corroboration by two individuals for therapy doses. The technician was eventually allowed to return to work, but under the direct supervision of the lead technologist or supervisor.

State—The Colorado Department of Public Health and Environment (CDPHE) conducted interviews of the licensee's staff and reviewed the licensee's written report in July 2011. The CDPHE issued a notice of violation (NOV) on August 17, 2011, and a followup Compliance Order on Consent on June 29, 2012.

AS12–10 Medical Event at the Medical Center at Bowling Green in Bowling Green, Kentucky

Date and Place—November 16, 2011, Bowling Green, KY.

Nature and Probable Consequences—The Medical Center at Bowling Green (the licensee) reported a medical event associated with a brachytherapy seed implant procedure to treat prostate cancer. The licensee scheduled back-to-back seed implant procedures, on consecutive days, for two patients who were prescribed a dose of 145 Gy (14,500 rad) to the prostate using 79 iodine-125 seeds. The licensee planned separate seed implant procedures for each patient and used the first patient's plan to correctly implant the seeds in the first patient. However, the licensee inadvertently reused the placement procedure for the first patient while placing the seeds in the second patient. This resulted in the incorrect placement of the seeds in the second patient and a dose to the urethra (wrong treatment site) of 310 Gy (31,000 rad). The second patient and referring physician were informed of this event.

On November 17, 2011, the licensee notified the KDPH that the wrong permanent prostate brachytherapy implant treatment plan was used on a patient. The radiation oncologist identified the discrepancy immediately upon completion of the seed implants on the second patient. A postprocedure CT and magnetic resonance imaging of the patient's prostate performed one month later revealed the patient received an approximate dose of 105.9 Gy (10,590 rad) to the prostate, which was 73 percent of the prescribed dose. The radiation oncologist placed additional seeds into the patient's prostate to improve coverage and comply with the treatment plan. The licensee concluded that the medical event would not have an adverse effect on the second patient.

Cause(s)—The cause of the medical event was human error in that the radiation oncologist deviated from standard operating procedures and did not verify the information on the prostate implantation plan.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included providing personnel with additional training on the modified process to ensure patients are treated using the correct prostate implant plan. Specifically, an individual will be assigned for printing the prostate

implant plan, verifying the patient's identity, and signing the document. Subsequently, a second assigned individual will then verify the information and sign the document for confirmation.

State—The KDPH conducted a reactive inspection on December 7, 2011, approved the licensee's corrective actions, and did not issue any violations or penalties for this event.

AS12–11 Medical Event at the University of Toledo in Toledo, Ohio

Date and Place—December 19, 2011, Toledo, OH.

Nature and Probable Consequences—The University of Toledo (the licensee) reported that a medical event occurred associated with an HDR brachytherapy treatment for cervical cancer; involving 148.4 GBq (4 Ci) iridium-192. The patient was prescribed to receive a total dose of 16 Gy (1,600 rad) in four fractionated doses to the cervix (treatment site). It was later determined that the skin of the patient's right and left thigh (wrong treatment sites) received doses of 12.51 Gy (1,251 rad) and 12.74 Gy (1,274 rad), respectively. The patient and referring physician were informed of this event.

During a followup patient visit in January 2012, the attending physician noticed a reddening of the skin (erythema) on both the right and left upper thighs of the patient. Upon investigation, the licensee did not identify any errors with the treatment plan, but discovered a problem with the hardware used during the procedure. During the treatment, a tandem is inserted into the patient, and a catheter for the sealed source is inserted in the tandem. The vendor had recently switched to a new catheter model that was slightly larger in diameter and thicker than the original. During the procedure, the catheter got caught on a minor blockage in the tandem and was not fully inserted, and the source was approximately 9 centimeter (cm) away from the treatment site. The misplaced source resulted in a total dose of 13.94 Gy (1,394 rad) to the treatment site and excessive doses to the patient's thighs. As of March 21, 2012, the attending physician reported that the patient had fully recovered from the medical event. The patient reported no bowel or bladder problems, and the damaged skin areas had totally healed. The physician does not anticipate significant acute or long-term complications because of this medical event.

Cause(s)—The cause of the medical event was human error in that the licensee failed to recognize that the catheter was not fully inserted into the tandem during at least one of the fractionated doses. A contributing factor was the change in catheter construction, which allowed it to get caught on the blockage in the tandem.

Actions Taken To Prevent Recurrence

Licensee—The corrective action taken by the licensee includes marking the new catheters to provide a visual indication of full insertion into the tandem and inservice training for all staff involved in HDR treatments.

State—The Ohio Department of Health (ODH) conducted an onsite investigation and reviewed the incident causes and corrective actions. In February 2012, the ODH issued a notice to all Ohio licensees advising them to verify procedures to preclude a recurrence of this event.

NRC12–02 Medical Event at Benefis Hospital in Great Falls, Montana

Date and Place—January 5, 2012, Great Falls, MT.

Nature and Probable Consequences—Benefis Hospital (the licensee) reported that a medical event occurred associated with an HDR brachytherapy treatment for esophageal cancer. The treatment involved the use of 233.1 GBq (6.3 Ci) of iridium-192 and the patient was prescribed to receive a total dose of 7 Gy (700 rad) to the esophageal region (treatment site). However, it was determined that a 4 cm length of tissue in the nasal and nasopharyngeal sinus area (wrong treatment site) received a dose of 10 Gy (1,000 rad). The patient and referring physician were informed of this event.

On January 5, 2012, while planning the treatment, the authorized medical physicist (AMP) determined the placement of the source using a radio-opaque marker wire to simulate the source with imaging software. During the treatment, a nasogastric (NG) tube is inserted into the patient through the nostril, allowing for positioning of the HDR catheter and source at the treatment site. The NG tubes also have radio-opaque markers to aid in their placement in the patient, which the AMP mistook for the radio-opaque markers on the simulation wire. This error by the AMP was compounded by the lack of CT images of the patient's anatomy where the simulation wire was positioned. When the medical staff removed the HDR catheter and NG tube at the end of the procedure, they discovered that the HDR catheter had not been fully inserted into the NG tube. The licensee performed an investigation and determined that the dose was actually delivered to a location 29 cm away from the treatment site. The licensee concluded that the medical event would not have an adverse effect on the patient.

Cause(s)—The cause of the medical event was human error in that the AMP failed to recognize the source's correct placement relative to the treatment site.

Actions Taken To Prevent Recurrence

Licensee—The corrective action taken by the licensee included procedure modification such that catheter length measurements are performed before treatment and the NG tube and HDR catheter are introduced to the patient as a unit, rather than separately. Additionally, CT scans will be taken to cover the entire length of the HDR catheter during all HDR procedures.

NRC—The NRC conducted a special inspection on January 18, 2012, and contracted with a medical consultant to review the event. The NRC's medical consultant agreed with the hospital's analysis of this event, and the NRC issued a NOV to the licensee.

AS12–12 Medical Event at Presbyterian Hospital in Charlotte, North Carolina

Date and Place—January 5 and 12, 2012, Charlotte, NC.

Nature and Probable Consequences—Presbyterian Hospital (the licensee) reported that a medical event occurred associated with an HDR brachytherapy treatment for gastric cancer; the treatment involved 185.4 GBq (5 Ci) of iridium-192. The patient was prescribed to receive three fractionated doses of 7 Gy (700 rad) to the common bile duct (treatment site). However, it was determined that a 4 cm length of tissue in the common bile duct and liver (wrong treatment sites) received a dose of 14 Gy (1,400 rad). The patient and referring physician were informed of this event.

On January 18, 2012, while conducting the third fractionated HDR brachytherapy treatment for gastric cancer, the dosimetrist noticed that incorrect dwell location was used on the previous two fractioned treatments. On the previous fractionated treatment dates, January 5, 2012, and January 12, 2012, the dwell position on the HDR was mistakenly adjusted outward rather than inward. This resulted in treating only 1 cm of the desired treatment site of the common bile duct and delivered a dose of 14 Gy (1,400 rad) to 4 cm of the proximal portion of the bile duct and surrounding liver tissue. The licensee concluded that the medical event would not have an adverse effect on the patient.

Cause(s)—The cause of the medical event was human error in that the

oncology staff presumed that the source position had been properly adjusted by the medical physics staff and did not notice this error until the third fractionated treatment.

Actions Taken To Prevent Recurrence

Licensee—The corrective action taken by the licensee included a procedure modification such that any catheter dwell position adjustments of greater than 5 millimeters (mm) mandate a replanning of the treatment protocol.

State—The North Carolina Division of Radiation Protection conducted a full inspection of the brachytherapy program (to include HDR) on February 16, 2012. There were no items of noncompliance, and the State reviewed and approved corrective actions. The State did not issue any violations or penalties for this event.

NRC12–03 Medical Event at Avera McKennan Hospital in Sioux Falls, South Dakota

Date and Place—January 16 and 17, 2012, Sioux Falls, SD.

Nature and Probable Consequences—Avera McKennan Hospital (the licensee) reported that a medical event occurred associated with an HDR brachytherapy treatment for breast cancer. The patient was prescribed to receive 10 fractionated doses of 3.4 Gy (340 rad) for a total dose of 34 Gy (3,400 rad) to the tumor site (treatment site). However, it was determined that the skin tissue over the rib cage (wrong treatment site) received a dose of 27.2 Gy (2,720 rad). The patient and referring physician were informed of this event.

On January 16, 2012, while conducting the fractionated HDR brachytherapy treatment for breast cancer, the medical staff identified that an incorrect treatment parameter length had been entered into the HDR. The programmed length was 10 cm too short and resulted in the source traveling to a location 10 cm short of the intended treatment site (inside the breast). This caused an unintended dose to the skin over the rib cage. This error was corrected and saved as a secondary treatment plan in the HDR console, which the staff used to correctly administer the second fractionated treatment. However, after the staff delivered the third fraction the following day (January 17, 2012), it was discovered that the original incorrect treatment plan had been inadvertently selected by the console operator, resulting in a second instance where the skin over the rib cage received an unintended dose. The licensee performed an investigation and the NRC contracted with a medical consultant, who determined that the patient received approximately 27.2 Gy (2,720 rad) of unintended skin dose and concluded that the event would not have an adverse effect on the patient. The patient experienced skin erythema, or reddening, as was expected from this level of skin exposure.

Cause(s)—The cause of the medical event was that the licensee failed to develop and implement effective procedures to ensure that patient treatment was in accordance with the written directive.

Actions Taken To Prevent Recurrence

Licensee—The corrective actions taken by the licensee included extensive revisions to the HDR procedures, including the development of requirements for independent verification of treatment parameter lengths, and staff training on these changes. The hospital also made organizational and personnel changes to improve the facility's safety culture.

NRC—The NRC conducted a special inspection from January 30 through February 2, 2012, and identified several procedural weaknesses in the licensee's HDR program. On October 3, 2012, the NRC issued a NOV and civil penalty to the licensee.

AS12–13 Medical Event at Thomas Jefferson University Hospital in Philadelphia, Pennsylvania

Date and Place—January 19, 2012, Philadelphia, PA.

Nature and Probable Consequences—Thomas Jefferson University Hospital (the licensee) reported that a medical event occurred associated with a radioembolization brachytherapy treatment of liver cancer for two patients. The first patient received a dose of 0.33 GBq (8.9 mCi) of yttrium-90 to the liver, but this was the dose prescribed for a second patient, which was 36 percent less than prescribed. The second patient received the dosage for the first patient, which was 0.514 GBq (13.9 mCi) or approximately 80 Gy (8,000 rad) and 64 percent greater than prescribed. The patients and referring physicians were informed of this event.

On January 20, 2012, the licensee reported that on the previous day the licensee administered the incorrect prescribed dosage of yttrium-90 to two patients. The licensee stated that the two patients were scheduled to be treated on the same day, in close time proximity, and that the worksheets were switched and each patient received the other patient's dose. The licensee concluded that the medical event would not have an effect on the two patients. However, the first patient received a higher dose than planned during the next scheduled treatment to compensate for the previous lower dosage described in this event. No adverse medical conditions are expected. The clinical judgment with respect to the second patient is that even though the dosage was 35 percent above that prescribed in the written directive, the activity was within levels acceptable for this particular patient and tumor size.

Cause(s)—The cause of the medical event was human error in that the medical staff did not verify the written directive before commencing the treatment, coupled with the erroneous transposition of the written directives in each patient's file.

Actions Taken To Prevent Recurrence

Licensee—The corrective actions taken by the licensee include developing and implementing written procedures to both minimize the chance of errors occurring in the microsphere dose preparation process and to identify and correct any such errors before administration. Independent checks by multiple individuals will be made to verify patient identity, treatment site, and prescribed dosage relative to the prepared dosage.

State—The PA DEP conducted a reactive investigation on January 26, 2012, and identified inadequacies in the administration procedure to provide assurances that each treatment is in accordance with the written directive. A NOV was issued by PA DEP; however, no order or final action was imposed because a revised dosage administration procedure was subsequently sent to PA DEP for review.

AS12–14 Medical Event at the Intermountain Medical Center in Murray, Utah

Date and Place—February 2, 2012, Murray, UT.

Nature and Probable Consequences—The Intermountain Medical Center (the licensee) reported that a medical event occurred associated with a radioembolization brachytherapy treatment of liver cancer. The treatment plan prescribed 5.32 GBq (143.6 mCi) of yttrium-90 to deliver a total dose of 120 Gy (12,000 rad) to the right lobe of the liver; however, the patient received the dosage for a different patient. The dosage administered to the patient was 1.77 GBq (47.8 mCi) of yttrium-90, which was approximately 33 percent of the prescribed activity or 67 percent lower than the prescribed dose. The resulting dose to the patient's liver was 39.6 Gy (3,960 rads). The patient and referring physician were informed of this event.

On February 2, 2012, two patients were at the licensee's facility to receive treatment for liver cancer using yttrium-90 microspheres. The nuclear medicine technologist inadvertently selected the wrong yttrium-90 microsphere vial and subsequently, administered to the first patient the dosage that was intended for the second patient. As a consequence, the first patient received an under dose of approximately 67 percent and because the licensee identified the error prior to administering any dose to the second patient, the licensee was able to treat the second patient with the correct dose. The licensee determined that the medical event would not have an effect on the first patient.

Cause(s)—The cause of the medical event was human error, which resulted in the licensee administering the wrong radiopharmaceutical treatment dose to the patient.

Actions Taken To Prevent Recurrence

Licensee—The corrective actions taken by the licensee include a requirement for two individuals to sign off on the dosage vial, with the written directive present, before administering the dosage to the patient. In addition, the licensee committed to following protocol verification just before treatment to verify the patient's identification, site being treated, dose to be administered, and the correct identification on the dose vial.

State—The Utah Department of Environmental Quality, Division of Radiation Control conducted an investigation on February 6, 2012, and concluded its investigation on April 19, 2012. The State approved the licensee's corrective actions and did not issue any violations or penalties for this event.

AS12–15 Medical Event at Abbott Northwestern Hospital in Minneapolis, Minnesota

Date and Place—February 2, 2012, Minneapolis, MN.

Nature and Probable Consequences—Abbott Northwestern Hospital (the licensee) reported to the Minnesota Department of Health (MDH) that a medical event occurred associated with a SIR-Spheres (microspheres) treatment of liver cancer involving 1.55 GBq (41.9 mCi) of yttrium-90. A postprocedure scan of the patient identified a significant undesired amount of activity in the upper stomach (gastric fundus), spleen and small intestine (duodenum) (wrong treatment sites). The licensee estimated doses to these tissues of 44 Gy (4,400 rad), 35 Gy (3,500 rad), and 35 Gy (3,500 rad), respectively. The patient and referring physician were informed of this event.

On February 3, 2012, the licensee notified MDH that following an infusion of radioactive yttrium-90, a postprocedure CT scan of the patient revealed that some of the yttrium-90 was not in the liver as intended. The scan indicated that 10 to 15 percent of the yttrium-90 appeared in vessels involving the spleen and digestive track. The patient received followup diagnostic scans to determine a baseline for future treatment and the long-term prognosis. On February 6, 2012, after consultation with international and domestic experts, the patient was administered the radio-protective agent amifostine. The licensee concluded that the event may result in unintended, permanent functional damage and some form of future medical intervention was likely needed. A special review group including surgeons, radiation oncologists, and interventional radiologists are managing the care of the patient on an ongoing basis.

Cause(s)—The licensee stated that they had not anticipated any adverse reactions to this treatment, and that the treatment was correctly planned and administered. However, the licensee hypothesized that the cause may have been the result of temporary blood vessel contractions in the patient due to the passage of the microspheres.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions were not indicated as the licensee followed appropriate therapy procedures and the treatment had no unusual implications. Additionally, based upon the large number of this type of treatment that the licensee has performed, it appears that this medical event is a rare occurrence.

State—On February 6, 2012, MDH performed an onsite investigation of the medical event. The MDH concluded that licensee procedures were appropriately followed and no violations were issued.

AS12–16 Medical Event at Carolina East Medical Center in New Bern, North Carolina

Date and Place—May 29, 2012, New Bern, NC.

Nature and Probable Consequences—Carolina East Medical Center (the licensee) reported that a medical event occurred associated with a manual brachytherapy treatment for prostate cancer. The treatment consisted of 27 needles containing 65 pre-stranded seeds of iodine-125 with each seed containing 12.6 MBq (0.34 mCi). The physician prescribed a total dose of 145 Gy (14,500 rad) to the prostate; however, it was determined during the post implant seed count that all of the seeds were implanted in the penile bulb (glans) (wrong treatment site). The resulting dose to the penile bulb was 145 Gy (14,500 rad). The patient and referring physician were informed of this event.

On May 29, 2012, after completion of the implantation procedure, the licensee performed a CT scan of the patient to verify the placement of the implanted seeds. The licensee confirmed that all of the seeds were improperly implanted in the penile bulb. The patient was informed the following day, since he had been under the effects of general anesthesia during and after the procedure. The patient and his family were counseled at length by the AU within a week of the occurrence of the medical event. The AU reported that the patient tolerated the brachytherapy procedure well, without acute toxicity. The AU reported that anticipated side effects from this event will be similar to the anticipated side effects from a typical permanent prostate brachytherapy implant. The licensee concluded that the medical event would not have a significant medical effect on the patient.

Cause(s)—The cause of the medical event was the incorrect identification of the prostate during ultrasound imaging resulting in the improper placement of the brachytherapy seeds.

Actions Taken To Prevent Recurrence

Licensee—The AU compiled a report and discussed corrective actions with the urologist and the authorized medical physicist. The licensee revised the procedures to include a mandatory ''time out'' period during implant procedures, and a quality assurance procedure for pre-plan ultrasounds. Additional licensee corrective actions include using single shot fluoroscopy, in addition to ultrasound, to verify placement of the brachytherapy seed needle at the base of the prostate. Contrast and other additional enhancements may be used in conjunction with the fluoroscopy to ensure more accurate imaging results.

State—The North Carolina Division of Radiation Protection conducted an investigation on June 12, 2012. Two items of noncompliance were noted: (1) The licensee failed to have documented procedures to ensure that a therapy is administered in accordance with the written directive, and (2) the licensee failed to have a program commensurate with licensed activities. Enforcement actions are pending the licensee's responses to the State.

AS12–17 Medical Events at Wheaton Franciscan Healthcare-All Saints in Racine, Wisconsin

Date and Place—July 15, 2005 through May 20, 2010 (reported on July 19, 2012), Racine, WI.

Nature and Probable Consequences—Wheaton Franciscan Healthcare-All Saints (the licensee) reported 15 medical events associated with prostate brachytherapy seed implant procedures, which occurred between July 2005 and May 2010. The medical events involved permanent implant seeds of iodine-125 where the total dose delivered differed from the prescribed dose by 20 percent or more. The 15 medical events involved 13 patients, including seven patients who received a rectal (wrong treatment site) dose that exceeded the prescribed prostate dose by more than 10 Gy (1,000 rads). The patients and physicians were informed of these events.

The Wisconsin Department of Health Services (WDHS) identified the medical events during a routine inspection and followed up with a reactive inspection on July 18, 2012. The WDHS inspectors determined that the licensee was not reviewing prostate brachytherapy cases against the medical event criteria. Instead, the licensee was using established dose-based criteria based upon the postoperative CT scans of the events. The events involved prostate procedures where the doses were less than 80 percent or greater than 130 percent of the prescribed dose, or procedures where the doses to 2 cubic centimeters (cm^3) of the rectum or bladder were greater than the prescribed prostate dose. The AU's review of each of the medical events concluded that the posterior rows of seeds were placed too close to the rectal mucosa. The licensee has evaluated all prostate implants performed since 2001. The licensee concluded that the medical events would not have any adverse effects on the patients and is monitoring their medical progress.

Cause(s)—The cause of the medical events was human error in that the licensee was not providing adequate oversight of the permanent implant prostate brachytherapy program.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions include: (1) Revising the prostate implant procedures to include the use of stranded seeds, (2) allowing only the AU to insert the needles into the prostate, and (3) a secondary check of the needle position prior to deploying the seeds. Additionally, the AU is now the only individual who contours the images on the postoperative CT scan, which is reviewed by the medical physicist to improve accuracy.

State—The WDHS conducted a reactive inspection on July 18, 2012, and did not cite the licensee because of the licensee's self-identified and implemented process improvements prior to the inspection. No additional cases have met the medical event reporting criteria.

NRC12–04 Medical Event at Deaconess Hospital in Evansville, Indiana

Date and Place—August 15, 2012, Evansville, IN.

Nature and Probable Consequences—Deaconess Hospital (the licensee) reported that a medical event occurred associated with an HDR mammosite brachytherapy treatment for breast cancer. The patient was prescribed to receive 10 fractionated doses for a total dose of 34 Gy (3,400 rad) to the breast tumor site. However, it was determined that a 4.2-cm length of skin and fatty breast tissue (wrong treatment sites) received a dose of 34 Gy (3,400 rad). The patient and referring physician were informed of this event.

Between March 5 and 9, 2012, the patient received two HDR mammosite treatments per day to the right breast for a total prescribed dose of 34 Gy (3,400 rad). During a followup appointment on June 11, 2012, it was noted that the catheter insertion site had not healed. A plastic surgeon performed surgical removal of the entire skin and breast tissue area affected by the treatment. The surgical pathology report revealed a final diagnosis of fat necrosis with granulation tissue radiation effect. Upon reviewing the pathology report, the prescribing physician requested complete review of the treatment plan by a qualified consultant. The consultant discovered that the unintended dose to the skin and fatty breast tissue was the result of the incorrect positioning of the HDR source. The possibility of long-term effects are low, but nonetheless additional skin ulceration and breast tissue necrosis could occur.

Cause(s)—The cause of the medical event was human error in that the medical physicist was not familiar with the treatment planning system for the HDR mammosite device. A contributing factor to the cause of the event was the licensee's ineffective independent check of the treatment plan prior to commencing the procedure.

Actions Taken To Prevent Recurrence

Licensee—The corrective actions taken by the licensee include the independent review, by a qualified third party, of HDR treatment plans prior to delivery for the first five plans provided by each physician or physicist. Additionally, the licensee requires the performance of an additional independent check that verifies the physical orientation of any channel (catheter) used in an HDR procedure. Finally, the licensee implemented appropriate training and continuing medical education programs for all staff participating in HDR procedures.

NRC—The NRC conducted a special inspection on August 22, 2012, and contracted with a medical consultant to review the event. The NRC's medical consultant agreed with the hospital's analysis of this event. On January 31, 2013, the NRC issued a NOV to the licensee.

AS12–18 Medical Event at the Anderson Regional Medical Center in Meridian, Mississippi

Date and Place—September 10, 2012, Meridian, MS.

Nature and Probable Consequences—Anderson Regional Medical Center (the licensee) reported that a medical event occurred associated with an iodine-131 treatment for thyroid carcinoma. The patient was prescribed to receive a total dose of 25 Gy (2,500 rad) to the thyroid using 3.7 GBq (100 mCi) of iodine-131. Instead, the patient received 6.03 GBq (162.8 mCi) of iodine-131 for an approximate dose of 40 Gy (4,000 rad) to the thyroid, which was about 160 percent of the prescribed dosage to the patient. The patient and referring physician were informed of this event.

On September 10, 2012, the licensee reported that a patient was administered 6.03 GBq (162.8 mCi) of iodine-131, instead of the prescribed 3.7 GBq (100 mCi). An investigation performed by the licensee revealed that the nuclear medicine technologist misinterpreted the patient's admission order as a written directive. Specifically, the nuclear medicine technologist incorrectly interpreted the AU's name and 5.55 GBq (149.9 mCi) of iodine-131 activity on the patient's admission order as the written directive for the patient's treatment. The written directive for the patient's treatment was never received by the Nuclear Medicine Department. The doctor indicated that the patient was previously treated using a prescribed dose of 100 mCi, and that the thyroid would be fully saturated with iodine-131. Additionally, the doctor believes that the thyroid would not have significant uptake of the excess iodine-131 and this excess would be quickly excreted from the patient. Therefore, the licensee concluded that this elevated

dose would not result in any adverse health effects to the patient.

Cause(s)—The medical event was caused by human error coupled with a new communication process, in which written directives were not directly communicated to the Nuclear Medicine Department.

Actions Taken To Prevent Recurrence

Licensee—The licensee restored its previous written directive communication policy, which required the communication of written directives directly from the AU to the Nuclear Medicine Department and required written directives for iodine-131 on a specific therapy form.

State—The Mississippi Division of Radiological Health conducted an investigation on September 19, 2012, and cited the licensee with a violation for its failure to follow written directive procedures. The investigation revealed this violation was an isolated incident during a two-month period where the change in written directive communication policy took place.

Dated at Rockville, Maryland, this 28th day of August, 2013.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2013–21477 Filed 9–3–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, September 11, 2013, at 11 a.m.

PLACE: Commission Hearing Room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open session will be audiocast. The audiocast may be accessed via the Commission's Web site at *http://www.prc.gov*. A period for public comment will be offered following consideration of the last numbered item in the open session.

MATTERS TO BE CONSIDERED: The agenda for the Commission's September 11, 2013 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report on legislative activities.
2. Report on handling of ate and service inquiries from the public.
3. Report from the Office of General Counsel on the status of Commission dockets.
4. Report from the Office of Accountability and Compliance.
5. Report from the Office of the Secretary and Administration.
6. Report on the Public Representative program pursuant to 39 U.S.C. 505.

PORTION CLOSED TO THE PUBLIC:

7. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

By direction of the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–21506 Filed 8–30–13; 11:15 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70276; File No. SR–FINRA–2013–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Wash Sale Transactions and FINRA Rule 5210 (Publication of Transactions and Quotations)

August 28, 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 August 15, 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 and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to add Supplementary Material .02 to FINRA Rule 5210 (Publication of Transactions and Quotations) to emphasize that wash sale transactions are generally non-bona fide transactions and that members have an obligation to have policies and procedures in place to review their trading activity for, and prevent, wash sale transactions.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

* * * * *

5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES

5210. Publication of Transactions and Quotations

No Change.

• • • Supplementary Material:

.01 Manipulative and Deceptive Quotations. No Change.

.02 Wash Sales. Transactions in a security that involve no change in the beneficial ownership of the security, commonly known as ''wash sales,'' generally are non-bona fide transactions for purposes of Rule 5210. Members must have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, wash sale transactions. Transactions that originate from unrelated algorithms or separate and distinct trading strategies within the same firm would generally be considered bona fide transactions and would not be considered wash sales, even if the transactions did not result in a change of beneficial ownership, unless the transactions were undertaken for manipulative or other fraudulent purposes. Algorithms or trading strategies within the most discrete unit of an effective system of internal controls at a member firm are presumed to be related (e.g., within an aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable). This Supplementary Material does not change members' existing obligations under NASD Rule 3010 and FINRA Rule 2010.

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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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

FINRA is proposing to add supplementary material to FINRA Rule 5210 to address members' obligations with respect to certain securities transactions that involve no change in the beneficial ownership of those securities, commonly known as ''wash sales.''

With the recent increase in automated trading activity and the use of algorithms by firms to make trading decisions, FINRA has observed an increase in the number of transactions occurring where a single firm's proprietary trading account is on both sides of a trade, often as a result of a firm hitting its own bid or offer. Even if these transactions were not undertaken with fraudulent or manipulative intent, they can create a misimpression of the level of legitimate trading interest and activity in the security.

FINRA recognizes that, in many situations, what may seem to be wash sale activity occurs as a result of orders that originate from the same firm, but from separate or distinct underlying trading strategies (*e.g.,* separate ''desks,'' aggregation units, or algorithms) that have different—and sometimes competing—investment objectives and that deliberately do not interact with each other prior to generating orders to the market. Consequently, the proposed supplementary material does not seek to prevent all types of trading activity that happen to result from separate strategies operating within a single firm.

The proposed supplementary material is intended to address wash sales occurring due to orders sent by a single algorithm or the unintended, but in FINRA's view preventable, interaction of multiple, related algorithms operated by a single firm. In a number of instances, FINRA has found that these types of transactions can account for a material percentage (*e.g.,* over 5%) of the consolidated trading volume in a security on a particular day, which can distort the market information that is publicly available for that security. Even if not purposeful, these transactions can create the misimpression of active trading in a security that could adversely impact the price discovery process. Furthermore, in these instances it appears that firms will continue to allow this type of trading to occur rather than incur the costs necessary to prevent it, even though the trading activity is resulting in instances where significant misinformation may be disseminated to the marketplace.

FINRA rules and the federal securities laws explicitly prohibit transactions in securities that do not result in a change of beneficial ownership in the securities when there is a fraudulent or manipulative purpose behind the trading activity.[3] In addition, FINRA Rule 5210 provides that no member may cause to be published or circulated any report of a securities transaction unless the member knows or has reason to believe that the transaction was a bona fide transaction. Supplementary Material .01 states that ''[i]t shall be deemed inconsistent with Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) and 5210 (Publication of Transactions and Quotations) for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.'' Consequently, each member has an existing obligation to know, or have a basis to believe, that transactions in which it participates are bona fide. Because wash sales generally are not bona-fide transactions, a member must review its trading activity to determine whether it is engaging in these types of transactions and make changes to minimize their occurrence.

Because of the increase in wash sale transactions noted above, FINRA is proposing to add Supplementary Material .02 to Rule 5210 to address specifically members' obligations with respect to wash sales that are occurring and being disseminated to the public when there is no fraudulent or manipulative motivation for the trading activity at issue.[4] Specifically, proposed Supplementary Material .02 emphasizes that members have an obligation to have policies and procedures in place to review their trading activity for, and prevent, wash sale transactions. The proposed rule change, however, explicitly excludes those transactions that originated from unrelated algorithms or from separate and distinct trading strategies, provided these transactions are not undertaken for manipulative or other fraudulent purposes.[5] The exclusion acknowledges the fact that some firms run multiple, separate algorithms or have trading desks that are separated by information barriers that, as a result of different or competing investment strategies within the same firm, may result in transactions where a single firm is on both sides of the trade. FINRA does not view these types of transactions as wash sales for purposes of Rule 5210, provided the trades are not undertaken with fraudulent or manipulative intent.

SEC Rule 200(f) provides that all traders within an ''aggregation unit'' must pursue only the particular trading objective or strategy of that aggregation unit and not coordinate that strategy with any other aggregation unit.[6] It also provides that, at the time of each sale, each aggregation unit determine its net position for every security that it trades. Supplementary Material .02 provides that algorithms or trading strategies within the most discrete unit of an effective system of internal controls at a member firm (*e.g.,* an aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable), are presumed to be related.

FINRA understands that not all wash sales, particularly those generated by trading algorithms, are avoidable. Consequently, only those firms that engage in a pattern or practice of effecting wash sale transactions that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210, as well as Rule 2010. The proposed rule change requires reasonable policies and procedures and would not, therefore, apply to isolated wash sale transactions.[7]

FINRA staff discussed the proposed rule change with several of its industry advisory committees in developing the approach reflected in the proposed rule change. Although these committees

[3] *See, e.g.,* 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b).

[4] Securities transactions that do not result in a change of beneficial ownership of the securities and that are undertaken for the purpose of creating or inducing a false or misleading appearance of activity in the securities are already prohibited by existing securities laws and FINRA rules. *See supra* note 3.

[5] FINRA notes that transactions that originate from unrelated algorithms or from separate or distinct trading strategies, trading desks, or aggregation units that are frequent or numerous may raise a presumption that such transactions were undertaken with the intent that they cross and may, therefore, be intended as manipulative or fraudulent.

[6] *See* 17 CFR 242.200(f).

[7] FINRA notes that the proposed rule change would not change member firms' existing obligations under NASD Rule 3010 and FINRA Rule 2010 with respect to wash sales.

recognized the problem FINRA was seeking to address and were generally supportive of the proposal, they indicated the need for FINRA to recognize that not all wash sales can be prevented. The proposed rule change explicitly includes language to exclude transactions that originated from unrelated algorithms or from separate and distinct trading strategies, trading desks, or aggregation units from being considered wash sales, provided these transactions are not undertaken for manipulative or other fraudulent purposes. The committees also requested guidance on whether the proposed rule change would apply to all wash sales or a subset. As noted above, only those firms that engage in a pattern or practice of effecting wash sale transactions that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210, as well as Rule 2010. The proposed rule change would not, therefore, apply to isolated wash sale transactions, provided the firm's policies and procedures were reasonable.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 60 days following publication of the *Regulatory Notice* announcing Commission approval. FINRA is providing firms with additional implementation time to ensure they have appropriate policies and procedures consistent with the proposed rule change.

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 the proposed rule change will reduce the number of wash sale transactions that, while not undertaken for manipulative or fraudulent purposes, nonetheless result in misinformation being disseminated to the marketplace and the public. FINRA believes that by requiring members to have reasonable policies and procedures in place to review for, and prevent, wash sales, the quality of market data will be enhanced, thus promoting just and equitable principles of trade and increasing the protection of investors and the public interest.

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. Although some firms may need to enhance their written policies and procedures and, potentially, implement changes to technological systems to ensure compliance with the proposed rule change, FINRA believes these changes are necessary to enhance the quality of market data and will not significantly burden competition as any firm running multiple algorithms or operating multiple trading strategies will be subject to the same standard.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–036 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–2013–036. 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–2013–036 and should be submitted on or before September 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21410 Filed 9–3–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70278; File No. SR–Phlx–2013–87]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Commentary to Rule 1080 To Add a New PIXL ISO Order Type

August 28, 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 August 21, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Commentary to Rule 1080 to add a new PIXL ISO order type.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 the Commentary to Rule 1080 to add a new PIXL ISO order type.

PIXL

The price-improving electronic auction (''PIXL'') is a process whereby Exchange members electronically submit orders they represent as agent against principal interest or other interest that they represent as agent.[3] The submitted orders are stopped at a price and are subsequently entered into an auction seeking price improvement.

An Exchange member (''Initiating Member'') may initiate a PIXL auction provided that it meets certain requirements depending on the size of the order, whether or not the order is for the account of a public customer and whether or not it is a Complex Order.[4] These requirements are as follows.

1. If the PIXL Order[5] is for the account of a public customer and is for a size of 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid/Offer (''NBBO'') on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order.[6]

2. If the PIXL Order is for the account of a public customer and is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the Exchange's Best Bid or Offer (''PBBO'') price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO, and at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order.[7]

3. If the PIXL Order is not for the account of a public customer and is for a size of 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO.[8]

4. If the PIXL Order is not for the account of a public customer and is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and at least one minimum improvement increment better than the PBBO on the opposite side of the market from the PIXL Order.[9]

5. If the PIXL Order is a Complex Order and of a conforming ratio,[10] the Initiating Member must stop the entire PIXL order at a price that is better than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options, provided in either case that such price is equal to or better than the PIXL Order's limit price.[11]

ISO

An intermarket sweep order (''ISO'') is defined in Rule 1066(i)[12] as a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 1080(n).

[4] For purposes of the electronic trading of Complex Orders pursuant to Rule 1080.08 only, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as 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. *See* Commentary .08(a)(i) to Rule 1080.

[5] 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 (other than in the final two seconds of a trading session) it represents as agent provided it submits the PIXL Order for electronic execution into the PIXL auction. *See* Rule 1080(n).

[6] Rule 1080(n)(i)(A)(1).

[7] Rule 1080(n)(i)(A)(2). This component of the PIXL system is effective for a pilot period scheduled to expire July 18, 2014.

[8] Rule 1080(n)(i)(B)(1).

[9] Rule 1080(n)(i)(B)(2). This component of the PIXL system is effective for a pilot period scheduled to expire July 18, 2014.

[10] The term ''conforming ratio'' is where the ratio between the sizes of the options components of a Complex Order is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is a conforming ratio, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not; where one component of the Complex Order is the underlying security, the ratio between any options component and the underlying security component must be less than or equal to eight contracts to 100 shares of the underlying security. *See* Commentary .08(a)(ix) to Rule 1080.

[11] Rule 1080(n)(i)(C). Where applied to Complex Orders where the smallest leg is less than 50 contracts in size, this component of the PIXL system shall be effective for a pilot period scheduled to expire July 18, 2014.

[12] In September 2013, the Exchange plans to begin implementation of enhancements to the Options Floor Broker Management System, with a trial period of two to four weeks, to be determined by the Exchange. As part of these enhancements, the definition of ISO will be moved to the Commentary to Rule 1080. *See* Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR–Phlx–2013–09).

Rule 1083.[13] ISOs are immediately executable within the Exchange's options trading system or cancelled, and shall not be eligible for routing as set out in Rule 1080. Simultaneously with the routing of an ISO to the Exchange's options trading system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Protected Offer in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

PIXL ISO Order Type

The Exchange proposes to implement a new PIXL ISO order type (''PIXL ISO'') that will allow the submission of an ISO into PIXL. Specifically, a PIXL ISO is the transmission of two orders for crossing pursuant to Rule 1080(n) without regard for better priced Protected Bids or Protected Offers because the participant transmitting the PIXL ISO to the Exchange has, simultaneously with the routing of the PIXL ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIXL auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIXL Order, meaning that any execution(s) obtained from the away side will be given to the agency side of the order.

The Exchange will accept a PIXL ISO provided the order adheres to the current PIXL Order acceptance requirements, which are outlined above, but without regard to the NBBO. The Exchange will execute the PIXL ISO in the same manner that it currently executes PIXL Orders, except that it will not protect prices away. Instead, order flow providers will bear the responsibility to clear all better priced interest away simultaneously with submitting the PIXL ISO order. There is no other impact to PIXL functionality. Specifically, liquidity present at the end of the PIXL auction will continue to be included in the PIXL auction as it is with PIXL Orders not marked as ISOs.

The Exchange will announce the implementation of this order type by Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal promotes just and equitable principles of trade and removes impediments to a free and open market in that it promotes competition, as described further below. Specifically, the proposal allows the Exchange to offer its members an order type that is already offered by another exchange.[16] In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PIXL mechanism. Finally, the proposal does not unfairly discriminate among members because all members are eligible to submit a PIXL ISO order.

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. Instead, the proposal is pro-competitive. First, it will enable the Exchange to provide market participants with an additional method of seeking price improvement through PIXL. Second, the proposal will allow the Exchange to compete against other markets that already allow an ISO order type in their price improvement mechanisms.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–87 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.

[13] Under Rule 1083, a ''Protected Quotation'' includes a Protected Bid or Protected Offer. A ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (i) is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. ''Bid'' or ''Offer'' means the bid price or the offer price communicated by a member of an Eligible Exchange to any broker or dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest. The ''OPRA Plan'' means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended. ''Best Bid'' and ''Best Offer'' mean the highest priced Bid and the lowest priced Offer. Finally, ''Eligible Exchange'' means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Act that: (i) Is a Participant Exchange in The Options Clearing Corporation (''OCC'') (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan; and (iii) if the national securities exchange is not a party to the OPRA Plan, is a participant in another plan approved by the Commission providing for comparable trade-through and locked and crossed market protection.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* CBOE Rule 6.53(q).

[17] *Id.*

[18] 15 U.S.C. 78s(b)(3)(A)(ii) [sic].

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–Phlx–2013–87. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–87, and should be submitted on or before September 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21411 Filed 9–3–13; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70279; File No. SR–OCC–2013–14]

Clearing Agency; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend an Existing Interpretation and Policy To Give OCC Discretion Not To Grant a Particular Clearing Member Margin Credit for an Otherwise Eligible Security

August 28, 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 August 15, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by OCC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend an existing Interpretation and Policy so that OCC has discretion to disapprove as margin collateral for a particular clearing member, shares of an otherwise eligible security held as margin.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose of the Proposed Rule Change

The purpose of the proposed rule change is to provide OCC with discretion with regard to granting or not granting margin credit to a clearing member. OCC currently may withhold margin credit from all clearing members with respect to a specific security. OCC proposes to address the risk presented by concentrated positions of securities posted as margin by particular clearing members by withholding margin credit from such clearing member's accounts. OCC proposes to enhance its ability to limit its risk exposure to a concentrated position of equity securities posted as margin by a specific clearing member by providing OCC with the discretion to disregard, for the purposes of granting margin credit, some or all of the otherwise eligible equity securities posted as margin. In addition, the proposed rule change is designed to provide OCC with discretion to make exceptions to proposed Interpretation and Policy .14 with respect to a specific clearing member. Accordingly, OCC may allow margin credit for an otherwise ineligible security for a specific clearing member in situations in which OCC determines that such security serves as a hedge to positions in cleared contracts in the same account of such clearing member.

Rule 604 lists the acceptable types of assets that clearing members may post with OCC to satisfy their margin requirements under Rule 601, including equity securities, and establishes the eligibility criteria for such assets. Equity securities are the most common form of margin assets posted by clearing members and, under Rule 601, are included in OCC's STANS margining system for the purposes of valuing such equity securities and determining on a portfolio basis a clearing member's margin obligation to OCC. Interpretation and Policy .14 to Rule 604 allows OCC to disapprove a security as margin collateral for all clearing members based on a consideration of the factors set forth in the interpretation, including number of outstanding shares, number of outstanding shareholders and overall trading volume. The STANS system currently takes into account the risk to a portfolio presented by fluctuations in the market price ofconcentrated security positions by identifying the two individual securities whose adverse price movements would result in the largest losses in each account and applying additional margin requirements to an account based on those losses if appropriate.However, this test does not evaluate a large equity securities position in relation to the securities position's average daily trade volume, which would be relevant if OCC were required to liquidate the position. OCC has determined that in the event of a clearing member liquidation, OCC may be exposed to concentration risk arising from a large equity security position deposited or pledged as margin by a particular clearing member. Depending on the relationship between the average daily trading volume of a particular security and the number of outstanding shares of such security deposited by a clearing member as margin, it is possible that the listed equities markets may not be able to quickly absorb the equity securities OCC seeks to sell, or without an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC also filed the proposed rule change as an advance notice under Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1). *See* SR–OCC–2013–805.

appreciable negative price impact, in the event OCC needs to liquidate the clearing member's accounts. This risk is greatest when the number of shares being sold is large and the average daily trading volume is low. Neither the STANS system nor Rule 604 explicitly addresses this type of concentration risk.

To address concentration risk arising from the potential need to liquidate a particular clearing member's margin collateral, OCC proposes to expand its discretion under Interpretation and Policy .14 to limit, in OCC's discretion, the margin credit granted to an individual clearing member account which maintains a concentrated equity securities position by disregarding some or all of the otherwise eligible equity securities posted as margin based on an assessment of specific factors listed in Interpretation and Policy .14. OCC considers an equity security's average daily trading volume and the number of shares a clearing member deposited as margin to be the two most significant factors when making a decision to limit margin credit due to concentration risk.[4] In addition, OCC proposes to amend Interpretation and Policy .14 so that it may grant margin credit when otherwise ineligible securities are deposited as margin collateral if such ineligible securities act as a hedge against cleared contracts held in the same account. For example, if a clearing member deposits otherwise ineligible equity securities as margin, OCC may nevertheless deem such ineligible securities to be acceptable margin collateral to the extent that the position is a hedge against a short position in its cleared contracts, because a decline in the value of the securities that serve as a hedge would be wholly or partially offset by an increase in value in the hedged position thereby reducing or eliminating the concentration risk. In such a situation, OCC will limit the margin credit granted to the lesser of a multiple of the daily trading volume or the ''delta equivalent position'' [5] for the particular equity security, taking into account the hedging position.[6]

OCC staff has been monitoring concentrated securities positions and assessing the impact of the proposed change described in this rule filing. OCC believes that, with OCC's assistance by supplying additional information to clearing members, clearing members will be able to accommodate the proposed changes without undue hardship. Accordingly, after receiving regulatory approval for the proposed rule change, OCC will implement the change and work on an ''as needed'' manual basis with clearing members that are impacted until the limits are imposed systematically and the distribution of the applicable files and reports to clearing members is automated.

(2) Statutory Basis for the Proposed Rule Change

The proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) [7] of the Act [8] and the rules and regulations thereunder, including Rules 17Ad–22(b)(1),[9] 17Ad–22(b)(2)[10] and 17Ad–22(d)(2)[11] for the following reasons. It provides for the prompt and accurate clearance and settlement of securities transactions and the protection of investors and the public interest by improving OCC's risk management process related to deposits as margin collateral of concentrated equity securities positions by individual clearing members. The proposed rule change enhances OCC's ability to limit its risk exposure to potential losses from defaults by such clearing members under normal market conditions through the use of risk-based parameters and encourages clearing members to have sufficient financial resources to meet their obligations to OCC. The proposed rule change is not inconsistent with any existing OCC By-Laws or Rules, including those proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[12] The proposed change will be applied equally to every clearing member based on all the factors listed in proposed Interpretation and Policy .14 and would encourage clearing members to avoid depositing concentrated equity security positions as margin, particularly where the average daily trading volume of the deposited security is low, while taking into account the use of equity securities as a hedge against short positions in cleared options or futures contracts. By limiting margin credit granted as proposed, OCC will reduce its risk exposure to a concentrated position of equity securities posted as margin by any clearing member. Accordingly, the proposed rule change contributes to the goal of OCC's financial stability in the event of clearing member default, rendering not unreasonable or inappropriate any burden on competition that the changes could be regarded as imposing.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required

[4] The limit is currently two times the equity security's average daily trading volume.

[5] The ''delta equivalent position'' is the value of a securities position that takes into account the position's use as a hedge against cleared option or futures positions. This value is calculated using the ''delta'' of the option or futures contract, which is the ratio between the theoretical change in the price of an underlying asset to the corresponding change in the price of the options or futures contract. Thus, delta measures the sensitivity of an options or futures contract price to changes in the price of the underlying asset. For example, a delta of +0.7 means that for every $1 increase in the price of the underlying stock, the price of a call option will increase by $0.70. Delta for an option or future can be expressed in shares of the underlying asset. For example, a standard put option with a delta of times −.45 would have a delta of −45 shares, because the unit of trading is 100 shares.

[6] Assume, for example, an average daily trade volume of 250 shares, a threshold of 2 times the average daily trade volume, and a delta of −300 shares for the options on a particular security in a particular account. A position of 700 shares that did not hedge any short options or futures would receive credit for only 500 shares (i.e., 2 times the average daily trade volume). If the net long position in the account, as adjusted for the delta of short option and futures positions, were only 400, credit would be given for the entire 700 shares since the delta equivalent position is below the 500 share threshold. However, if the option delta were +300, the net long position would be 1000, and credit would only be given for 500 shares because the delta equivalent position would exceed the 500 share threshold.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78a et seq.

[9] 17 CFR 240.17Ad–22(b)(1).

[10] 17 CFR 240.17Ad–22(b)(2).

[11] 17 CFR 240.17Ad–22(d)(2).

[12] 15 U.S.C. 78q–1(b)(3)(I).

with respect to the proposal are completed.[13]

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–OCC–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2013–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 Section, 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_14.pdf.*

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–OCC–2013–14 and should be submitted on or before September 25, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21458 Filed 9–3–13; 8:45 am]

BILLING CODE 8011–01–P

[13] OCC also filed the proposed rule change as an advance notice under Section 806(e)(1) of the Clearing Supervision Act. *See supra* note 3.

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Next Gen Advisory Committee (NAC)

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

ACTION: Notice of RTCA NextGen Advisory Committee (NAC).

SUMMARY: The FAA is issuing this notice to advise the public of the tenth meeting of the RTCA NextGen Advisory Committee (NAC).

DATES: The meeting will be held September 19, 2013 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be at RTCA Headquarters, NBAA/Colson Conference Rooms, 1150 18th Street NW., Suite 910, Washington DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, by telephone at (202) 833–9339, fax at (202) 833–9434, or the Web site at *http://www.rtca.org.* Alternately, contact Andy Cebula at (202) 330–0652, or email *acebula@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a NextGen Advisory Committee meeting. The agenda will include the following:

September 19, 2013

- Opening of Meeting and Introduction of NAC Members—Chairman Bill Ayer, Chairman, Alaska Air Group.
- Official Statement of Designated Federal Official—The Honorable Michael Whitaker, FAA Deputy Administrator.
- Review and approval of June 4, 2013 Meeting Summary.
- Chairman's Report—Chairman Ayer.
- FAA Report—Mr. Whitaker.
- FAA NextGen Performance SnapShots
- Featured PBN Implementation Location.
- Recommendation for Fuel Data Sharing for Measuring NextGen Performance.
  - Recommendation on data sources to track and analyze the impacts of NextGen developed by the Business Case and Performance Metrics Work Group.
- Recommendation for NextGen Activity Prioritization.
  - Recommendation for NextGen activity and prioritization and revised list of NextGen integrated capabilities and locations developed by an Ad Hoc Committee of the NAC and the NAC Subcommittee.
- Performance Based Navigation (PBN).
  - Recommendation for Prioritization of New or the Revision or Elimination of Existing PBN Procedures developed by Operational Capabilities Work Group.
- Recommendation for Future Metroplex Optimization Activity.
  - Recommendation for Future Use of Optimization of Airspace and Procedures in the Metroplex (OAPM) developed by the Operational Capabilities Work Group
- Anticipated Issues for NAC consideration and action at the next meeting.
- Other Business.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 27, 2013.

Paige L. Williams,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2013–21374 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0298]

New Entrant Safety Assurance Program Operational Test

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

ACTION: Notice.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces an operational test of procedural changes to the New Entrant Safety Assurance Program. The operational test began in July 2013 and will be in effect for up to 12 months. It is applicable to new entrant motor carriers domiciled in the States of California, Florida, Illinois, Montana, New York and the Canadian Provinces contiguous to Montana and New York. The operational test procedures allow FMCSA to complete an off-site safety audit of eligible new entrant motor carriers that can demonstrate basic safety management controls by submitting compliance documentation as requested by FMCSA. The purpose of the operational test is to compare off-site and on-site new entrant safety audits in terms of resource allocation and subsequent safety performance of new entrant motor carriers.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, telephone: (412) 395–4816, email: *bryan.price@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 210(a) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1748, December 9, 1999] (MCSIA), mandates that the Secretary of Transportation establish regulations to require each motor carrier owner and operator granted new operating authority registration to undergo a safety review within 18 months of starting interstate operations. [49 U.S.C. 31144(g)]. In issuing these regulations, the Secretary was required to: (1) Establish the elements of the safety review, including basic safety management controls; (2) consider their effects on small businesses; and (3) consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.

In response to the statutory mandate in MCSIA, FMCSA published an interim final rule titled, ''New Entrant Safety Assurance Process'' on May 13, 2002 (67 FR 31978), which became effective January 1, 2003. Subpart D of 49 CFR part 385 requires a safety audit within 18 months after a new entrant motor carrier begins operations to determine if the carrier is exercising basic safety management controls. On December 16, 2008 (73 FR 76472), the regulations were strengthened to raise the standard for passing a new entrant safety audit and to establish procedures for expedited action if certain violations are discovered during a roadside inspection while a motor carrier is in the new entrant program.

The 2008 final rule required compliance beginning on December 16, 2009. These strengthened regulations maintained the requirement to conduct a safety audit within 18 months of beginning interstate operations. By policy, FMCSA has also implemented more stringent safety audit completion deadlines for new entrant passenger carriers, requiring that they receive a safety audit within 9 months of beginning interstate operations.

Congress significantly tightened the deadlines for completion of new entrant safety audits. Section 32102 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 778 (July 6, 2012)] requires new entrant motor carriers to ''undergo a safety review not later than 12 months'' after beginning interstate operations, and within 120 days for certain passenger carriers [49 U.S.C. 31144(g)(1)]. Section 32102 has an effective date of October 1, 2013.

Need for a More Efficient New Entrant Safety Assurance Process

Under the current New Entrant Safety Assurance Program, approximately 34,000 safety audits are conducted annually. Significant FMCSA resources are required to travel to each motor carrier's principal place of business to conduct these safety audits. As presented in the table below, the vast majority of the safety audits have been completed within the 18-month statutory guideline previously established by Congress. However, the number of new entrant motor carriers entering the program continues to grow each year and FMCSA's ability to complete all new entrant safety audits is significantly impacted by the more stringent MAP–21 deadlines.

The table below (*http://www.fmcsa.dot.gov/facts-research/art-safety-progress-report.htm*) also indicates that approximately 70 percent of new entrant motor carriers pass their safety audit each year by demonstrating basic safety management controls in the areas of driver qualifications, hours of service, vehicle maintenance, accident register, and controlled substances and alcohol use and testing. Unless roadside inspection results have indicated evidence of a violation requiring expedited action as described in 49 CFR 385.308, or a pattern of poor inspections severe enough to place the carrier in the high-risk category, the primary consideration for prioritizing safety audits is the number of months since the new entrant motor carrier received its USDOT Number. The Agency currently devotes the same resources in travel costs and staff time to on-site reviews of low-risk and higher-risk new entrant motor carriers.

The FMCSA believes there are opportunities to increase efficiency within the New Entrant Safety Assurance Program in a manner that will enhance safety and improve the Agency's ability to meet the more stringent MAP–21 safety audit deadlines.

	FY 2010	FY 2011	FY 2012
New Entrant Safety Audits Conducted	34,140	34,276	34,349
Percentage of New Entrants That Pass the Safety Audit	72.6%	65.0%	74.1%
Percentage of New Entrant Safety Audits Completed within Statutory/Policy Timeframes	92.5%	87.2%	88.3%

Operational Test of Procedural Changes

FMCSA began the operational test of procedural changes to the New Entrant Safety Assurance Program in July 2013. These alternate procedures apply to new entrant motor carriers domiciled in the States of California, Florida, Illinois, Montana, and New York. In addition, FMCSA staff based in Montana and New York are using these procedures to conduct safety audits on the Canadian new entrant motor carriers domiciled in the Provinces contiguous to their States. There will be no regulatory relief provided during the operational test, and the test is being carried out in

accordance with existing regulations in subpart D of 49 CFR part 385.

During the test, certain motor carriers are automatically flagged for an on-site new entrant safety audit at their principal place of business, as is current practice. These motor carriers include: Passenger carriers, carriers with evidence of roadside inspection activity while transporting a placardable quantity of hazardous materials; motor carriers with one or more Safety Measurement System (SMS) Behavior Analysis and Safety Improvement Category (BASIC) measurement above FMCSA's intervention threshold; and motor carriers with evidence of an expedited action violation as described in 49 CFR 385.308.

All other new entrant motor carriers will be contacted by letter and asked to electronically submit legible copies of documentation to a new entrant safety audit Web site (*http://ai.fmcsa.dot.gov/newentrant*). The requested documentation allows FMCSA to initiate the safety audit process remotely off-site through verification of compliance with basic safety management controls related to driver qualification, driver duty status, vehicle maintenance, the accident register, and controlled substances and alcohol use and testing consistent with 49 CFR 385.311.

The letter describes requested documents and explains that submission of these documents preclude the need for a safety audit at the new entrant carrier's place of business. In addition, the letter explains that failure to submit the requested documentation or failure to respond to the letter will be treated as a refusal to undergo a safety audit and could constitute a failure to permit the safety audit in accordance with 49 CFR 385.337(b), which could result in revocation of the carrier's registration and issuance of an order prohibiting interstate operations. Carriers who are unable to submit the requested documentation may submit an explanation in writing to FMCSA within 10 days from the service date of FMCSA's request.

A new entrant safety auditor subsequently reviews the submitted documentation and either:

(1) Prepares a report to document that the motor carrier has passed the new entrant safety audit;

(2) Contacts the motor carrier to request additional documentation; or

(3) Schedules a safety audit at the motor carrier's principal place of business as soon as practicable, based upon violations observed in the submitted documentation.

FMCSA believes that these test procedures will more efficiently verify the safety status of new entrant carriers, resulting and allow the Agency to better utilize its resources for on-site safety audits of higher-risk (e.g., passenger and HM) carriers, and carriers that are non-compliant. The test procedure will also provide a more effective process for those unable or unwilling to provide the requested documents. These test procedures will help the Agency meet the MAP–21 safety audit deadlines.

This table shows how the new entrant operational test differs from the current new entrant safety audit process:

New Entrant (NE) Safety Assurance Program Today	New Entrant (NE) Safety Assurance Program Operational Test Process
Carrier Enters NE Program ↓ Roadside performance data monitored for Expedited Action violations ↓ All carriers receive a NE safety audit at their principal place of business, generally prioritized by program entry date	Carrier Enters NE Program ↓ Roadside performance data monitored for Expedited Action violations ↓ Higher risk carriers, to include passenger and HM carriers, (and carriers demonstrating poor performance through SMS BASICs or expedited action violations, are ***automatically*** prioritized for a NE safety audit at their principal place of business ↓ Eligible carriers receive ***earlier*** off-site safety audit and verification of safety management controls through document submission ↓ Carriers unable to demonstrate adequate safety management controls through submitted documents will receive an on-site safety audit.

Test Metrics

FMCSA will monitor and evaluate the effectiveness, efficiency, innovation, and flexibility of the operational test procedures in contrast to the current new entrant safety assurance program during and after the test through examination of several performance metrics. The metrics may include but are not limited to:

Effectiveness Metrics

- Crash rates.
- Roadside inspection violation and out-of-service (OOS) rates.
- Motor carrier SMS scores.
- Expedited Action violation rates.
- Safety audit failure rates and number of processed corrective action plans (CAPs) submitted by carriers following failed safety audits.

Efficiency Metrics

- Total safety audits performed.
- Time elapsed between entry into the new entrant program and completion of a safety audit.
- Time required to conduct a safety audit.
- Number and percentage of past-due safety audits.
- Total travel costs.
- Total travel time.

Innovation Metrics

- New entrant Web site use.
- Ease of document submission as determined by the number and percentage of carriers that submit documentation electronically.

Flexibility Metrics

- Number and percentage of safety audits that had to be converted to the motor carrier's principal place of business.
- Reason for conversion to a safety audit at the motor carrier's principal place of business.

Issued On: August 27, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–21442 Filed 9–3–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 43 (Sub-No. 186X)]

Illinois Central Railroad Company—Abandonment Exemption—in Hinds County, Miss.

Illinois Central Railroad Company (IC) [1] has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.16 miles of rail line between mileposts 0.36 and 0.20, in Jackson, Hinds County, Miss. The line traverses United States Postal Service Zip Code 39204.

IC has certified that: (1) No local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 4, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 16, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 24, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Thomas J. Healey, 17641 S. Ashland Ave., Homewood, IL 60430.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

IC has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 9, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by September 4, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: August 23, 2013.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–21420 Filed 9–3–13; 8:45 am]

BILLING CODE 4915–01–P

[1] IC is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720

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 720, Quarterly Federal Excise Tax Return.

DATES: Written comments should be received on or before November 4, 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 Sara Covington at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *sara.l.covington@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: Quarterly Federal Excise Tax Return.

OMB Number: 1545–0023.

Form Number: 720.

Abstract: Form 720 is used to report (1) Excise taxes due from retailers and manufacturers on the sale or

manufacture of various articles, (2) the tax on facilities and services, (3) environmental taxes, (4) luxury tax, and (5) floor stocks taxes. The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally the data is reported by the IRS to Treasury so that funds may be transferred from the general revenue fund to the appropriate trusts funds.

Current Actions: At this time, there were changes made to Part I and Part II, 2nd quarter of form 720.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 405,744.

Estimated Time Per Respondent: 11 hrs, 02 minutes.

Estimated Total Annual Burden Hours: 4,478,958.

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: August 7, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–21408 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

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)).

DATES: Written comments should be received on or before November 4, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has 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 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 the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1345. *Regulation Project Number:* CO–99–91.

Abstract: This regulation modifies the application of the segregation rules under Internal Revenue Code section 382 in the case of certain issuances of stock by a loss corporation. The regulation provides exceptions to the segregation rules for certain small issuances of stock and for certain other issuances of stock for cash. The regulation also provides that taxpayers may make an irrevocable election to apply the exceptions retroactively.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1.

Title: Indoor Tanning Services; Cosmetic Services; Excise Tax.

OMB Number: 1545–2177.

Regulation Number: Regulation 112841–10.

Abstract: The collection of information in this proposed regulation contains proposed amendments to the

Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section 5000B of the Code was enacted by section 10907 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to impose an excise tax on indoor tanning services. This information is required to be maintained in order for providers to accurately calculate the tax on indoor tanning services when those services are offered with other goods and services.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated total average annual record-keeping burden: 10,000 hours.

Estimated average annual burden hours per record-keeper: 30 minutes.

Estimated number of record-keepers: 20,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: August 26, 2013.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–21406 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8941

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 8941, Credit for Small Employer Health Insurance Premiums.

DATES: Written comments should be received on or before November 4, 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 Katherine Dean, at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit for Small Employer Health Insurance Premiums.

OMB Number: 1545–2198.

Form Number: Form 8941.

Abstract: Section 1421 of the Patient Protection and Affordable Care Act, PL 111–148, allows qualified small employers to elect, beginning in 2010, a tax credit for 50% of their employee health care coverage expenses. Form 8941, Credit for Small Employer Health Insurance Premiums, has been developed to help employers compute the tax credit.

Current Actions: As of 2012, 4 line items were deleted from Form 8941. This submission is made to accurately reflect the decrease in burden achieved with their deletion. There are no changes to this year's form that affect the burden to the taxpayer.

Type of Review: Revision of previously approved collection.

Affected Public: Individuals or households, business or other for-profit groups, not-for-profit institutions, farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Responses: 3,046,964.

Estimated Time Per Respondent: 14 hours 46 minutes.

Estimated Total Annual Burden Hours: 34,278,346.

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: August 9, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–21407 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Information Returns Required of United States Persons With Respect To Certain Foreign Corporations.

DATES: Written comments should be received on or before November 4, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. 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 regulation should be directed to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Returns Required of United States Persons with Respect To Certain Foreign Corporations.

OMB Number: 1545–1317. *Regulation Project Number:* INTL–79–91. (T.D. 8573)

Abstract: This regulation amends the existing regulations under sections 6035, 6038, and 6046 of the Internal Revenue Code. The regulation amends and liberalizes certain requirements regarding the format in which information must be provided for purposes of Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. The regulation provides that financial statement information must be expressed in U.S. dollars translated according to U.S. generally accepted accounting principles and permits functional reporting of certain items.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

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: August 20, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–21402 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–116608–97]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation. REG–116608–97 EIC Eligibility Requirements (§ 1.32–3).

DATES: Written comments should be received on or before November 4, 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 for and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: EIC Eligibility Requirements.

OMB Number: 1545–1575.

Regulation Project Number: REG–116608–97.

Abstract: Under Section 1.32–3, this regulation provides guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The regulation applies to taxpayers claiming the EIC for taxable years beginning after December 31, 1996.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1.

Estimated Total Annual Hours: 1.

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: August 8, 2013.

Allan Hopkins,

IRS Supervisory Tax Analyst.

[FR Doc. 2013–21409 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning affordable care act notice of patient protection.

DATES: Written comments should be received on or before November 4, 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 regulations should be directed to Sara Covington, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov*.

Title: REG–120399–10–Affordable Care Act Notice of Patient Protection.

OMB Number: 1545–2181.

Regulation Project Number: REG–120399–10 [RIN 1545–BJ61] (T.D. 9491)

Abstract: Section 2719A of the Public Health Service Act (PHS Act), incorporated into Code section 9815 by section 1563(f) of the Patient Protection and Affordable Care Act, Public Law 111–148, requires that a group health plan or a health insurance issuer requiring or allowing for the designation of a primary care provider provide notice to participants of the right to designate a primary care provider (including a pediatrician for a child) and of the right to obtain access to obstetrical or gynecological services without referral from a primary care provider.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 170,000

Estimated Total Annual Burden Hours: 33,000

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–21400 Filed 9–3–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation will meet on September 10–11, 2013, at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. The sessions will begin at 8:30 a.m. and end at 4:30 p.m. on both days. The Committee will meet in Room 948 on September 10 and in Room 230 on September 11. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Nancy Copeland, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420 or email at *nancy.copeland@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins. Any member of the public wishing to attend the meeting or seeking additional information should email Mrs. Copeland or contact her at (202) 461–9685.

Dated: August 28, 2013.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–21388 Filed 9–3–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards Regulatory Clarifications; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2010–0606; FRL–9839–7]

RIN 2040–AF 16

Water Quality Standards Regulatory Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to the federal water quality standards (WQS) regulation which helps implement the Clean Water Act. The changes will improve the regulation's effectiveness in restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The EPA is seeking comments from interested parties on these proposed revisions. The core of the current regulation has been in place since 1983; since then, a number of issues have been raised by states, tribes, or stakeholders or identified by the EPA in the implementation process that will benefit from clarification and greater specificity. The proposed rule addresses the following key program areas: Administrator's determinations that new or revised WQS are necessary, designated uses, triennial reviews, antidegradation, variances to WQS, and compliance schedule authorizing provisions.

DATES: Comments must be received on or before December 3, 2013.

ADDRESSES: Submit your comments, identified by Docket identification (ID) No. EPA–HQ–OW–2010–0606, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: ow-docket@epa.gov.*
- *Mail:* Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Attention: Docket ID No. EPA–HQ–OW–2010–0606.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention: Docket ID No. EPA–HQ–OW–2010–0606. Such deliveries are only accepted during the Docket Center's normal hours of operation. Special arrangements should be made for deliveries of boxed information by calling 202–566–2426.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2010–0606. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disc 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. For additional information about the EPA's public docket visit the Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket Center, EPA/DC, EPA West, 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; the telephone number for the Office of Water Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Janita Aguirre, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202–566–1860; fax number: 202–566–0409; email address: *WQSRegulatoryClarifications@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

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I. General Information

A. Does this action apply to me?

State and tribal governments responsible for administering or overseeing water quality programs may be directly affected by this rulemaking, as states and authorized tribes[1] may

[1] Hereafter referred to as ''states and authorized tribes'' or ''states and tribes.'' ''State'' in the Clean

need to consider and implement new provisions, or revise existing provisions, in their water quality standards (WQS or standards). Entities such as industrial dischargers or publicly owned treatment works that discharge pollutants to waters of the United States may be indirectly affected by this rulemaking because WQS may be used in determining permit limits under the National Pollutant Discharge Elimination System (NPDES) or in implementing other Clean Water Act (CWA or the Act) regulatory programs. Citizens concerned with water quality and WQS implementation may also be interested in this rulemaking, although they might not be directly impacted. Categories and entities that may potentially be affected include the following:

Category	Examples of potentially affected entities
States and Tribes	States and authorized tribes (tribes eligible to administer WQS under the CWA).
Industry	Industries discharging pollutants to waters of the United States.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to waters of the United States.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. It lists the types of entities of which the EPA is aware could be potentially affected by this action. Other types of entities not listed in the table might be affected through implementation of WQS that are revised as a result of this rule. 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. What should I consider as I prepare my comments for the EPA?

1. Resubmitting Relevant Comments From 2010 Stakeholder and Public Listening Sessions

From August through December 2010, the EPA held multiple listening sessions with stakeholders and the public, as well as consultation sessions with states, tribes, and representatives of state and local elected officials, concerning the general directions of this proposed rule. The EPA considered the views and comments received from these sessions in developing this proposal. The proposal published today has evolved substantially from the materials the EPA shared at that time. If you submitted comments in response to any of those sessions and wish for these comments to be considered during the public comment period for this proposed rulemaking, you must resubmit such comments to the EPA in accordance with the instructions outlined in this document.

2. Submitting Confidential Business Information (CBI)

Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disc that you mail to the EPA, mark the outside of the disc as CBI and then identify electronically within the disc 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 Code of Federal Regulations (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 CFR part or section number.
- Submit any and all comments on any portion of the rulemaking that you wish to be considered.
- 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 provide an estimate of 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.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is the statutory and regulatory history of the WQS regulation and program?

The CWA—initially enacted as the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and subsequent amendments—establishes the basic structure in place today for regulating pollutant discharges into the waters of the United States. In the Act, Congress established the national objective to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'' and to achieve ''wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water'' (sections 101(a) and 101(a)(2)).

The CWA establishes the basis for the current WQS regulation and program. Section 301 of the Act provides that ''the discharge of any pollutant by any person shall be unlawful'' except in compliance with specific requirements of Title III and IV of the Act, including industrial and municipal effluent limitations specified under section 304 and ''any more stringent limitation, including those necessary to meet WQS, treatment standards or schedule of compliance established pursuant to any State law or regulation.'' Section 303(c) of the Act addresses the development of state and authorized tribal WQS and provides for the following:

(1) WQS shall consist of designated uses and water quality criteria based upon such uses;

(2) States and authorized tribes shall establish WQS considering the following possible uses for their waters—propagation of fish, shellfish and wildlife, recreational purposes, public water supply, agricultural and

Water Act and this document refers to a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

industrial water supplies, navigation, and other uses;

(3) State and tribal standards must protect public health or welfare, enhance the quality of water, and serve the purposes of the Act;

(4) States and tribes must review their standards at least once every 3 years; and

(5) The EPA is required to review any new or revised state and tribal standards, and is also required to promulgate federal standards where the EPA finds that new or revised state or tribal standards are not consistent with applicable requirements of the Act or in situations where the Administrator determines that federal standards are necessary to meet the requirements of the Act.

The EPA established the core of the current WQS regulation in a final rule issued in 1983.[2] This rule strengthened previous provisions that had been in place since 1977 and moved them to a new 40 CFR part 131 (54 FR 51400, November 8, 1983). The resulting regulation describes how the WQS envisioned in the CWA are to be administered. It clarifies the content of standards and establishes more detailed provisions for implementing the provisions of the Act. The following are examples of how the regulation has interpreted and implemented the CWA provisions regarding standards:

- Establishes procedures to recognize the importance of designating beneficial uses to achieve the CWA section 101(a)(2) interim goal with regard to protecting aquatic life and recreational uses, and to provide states and tribes the option of establishing sub-categories of uses, such as cold water and warm water aquatic life designations (§ 131.10).
- Provides detail concerning the adoption of numeric water quality criteria, including authorizing the modification of the EPA's national recommended criteria to reflect site-specific conditions, the use of criteria methodologies different from the EPA's recommendations so long as they are scientifically defensible, and the use of narrative criteria where numeric criteria cannot be derived or to supplement numeric criteria (§ 131.11).
- Incorporates and clarifies the Act's emphasis on the importance of preserving existing uses and identifying and preserving high quality and outstanding resource waters through longstanding antidegradation provisions. These provisions are designed to protect existing uses and the level of water quality necessary to support these uses; to protect high quality waters and provide a transparent analytic process for states and tribes to determine whether limited degradation of such waters is appropriate and necessary (§ 131.12).

In support of the 1983 regulation, the EPA has issued a number of guidance documents, such as the ''Water Quality Standards Handbook'' (WQS Handbook),[3] that have provided guidance on the interpretation and implementation of the WQS regulation, and on scientific and technical analyses that are used in making decisions that would impact WQS. The EPA also developed the ''Technical Support Document for Water Quality-Based Toxics Control''[4] (TSD) that provided additional guidance for implementing state and tribal WQS.

The part 131 regulation has been modified twice since 1983. First, in 1991 the EPA added §§ 131.7 and 131.8 regarding tribes, pursuant to section 518 of the CWA (56 FR 64893, December 12, 1991). Section 518, which was enacted in 1987, included provisions extending the ability to participate in the WQS program to Indian tribes. Second, in 2000 the EPA promulgated § 131.21(c), commonly known as the ''Alaska Rule,'' to clarify that new and revised standards adopted by states and tribes and submitted to the EPA after May 30, 2000 become applicable standards for CWA purposes only when approved by the EPA (65 FR 24641, April 27, 2000).

B. How has the public provided EPA input on the national WQS Program in the past?

The EPA received comments, data, and information from over 6,000 commenters in developing ''Final Water Quality Guidance for the Great Lakes System'' in 1995 (60 FR 15366, March 23, 1995). The final Guidance represented more than six years of intensive, cooperative efforts that included participation by the eight Great Lakes states, the EPA, and other Federal agencies in open dialogue with citizens, local governments, municipalities, academia, the environmental community, and industries located in the Great Lakes ecosystem. This process entailed a thorough review and analysis of the federal water quality program and opportunities for greater clarity, focus, and improved implementation. The final Guidance is codified in 40 CFR part 132 and helps establish consistent, enforceable, and long-term protections from all types of pollutants, with short-term emphasis on the types of bio-accumulative contaminants that accumulate in the food web and pose a threat to the Great Lakes System. While not all provisions of the Final Guidance may be necessary or appropriate for the national Water Quality Standards Program, the EPA considered the input received from the public through the development of the Final Guidance during the preparation of this proposed rule.

In 1998, the EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) to discuss and invite comment on over 130 aspects of the federal WQS regulation and program, with a goal of identifying specific changes that might strengthen water quality protection and restoration, facilitate watershed management initiatives, and incorporate evolving water quality criteria and assessment science into state and tribal WQS programs. (63 FR 36742, July 7, 1998). In response, the EPA received over 3,200 specific written comments from over 150 comment letters. The EPA also held three public meetings during the 180-day comment period where additional comments were received and discussed.

Although the EPA chose not to move forward with a rulemaking after the ANRPM, as a result of the input received, the EPA identified a number of high priority issue areas for which the Agency has developed guidance, provided technical assistance and continued further discussion and dialogue to assure more effective program implementation. For example, many ANPRM commenters expressed the need for additional assistance on establishing designated uses of water bodies and the process to follow when making designated uses more or less protective. In order to receive input from a broad set of stakeholders on these topics, the EPA held a follow-up national symposium on designated uses on June 3–4, 2002 in Washington, DC. Approximately 200 interested citizens, government officials, and regulated parties attended this open meeting, which included presentations from a variety of stakeholders and an expert panel representing different

[2] In this preamble, the EPA uses the term ''water quality standards regulation'' to mean subparts A, B, and C of part 131. These three subparts, comprising §§ 131.1 through 131.22, contain general provisions, requirements for establishing standards, and procedures for review and revision of standards, respectively. Part 131 also includes a subpart D that contains the text of WQS the EPA has promulgated to replace or augment state and tribal standards.

[3] First edition, December 1983; second edition, EPA 823–B–94–005a, August 1994.

[4] First edition, EPA 440/4–85–032, September 1985; revised edition, EPA 505/2–90–001, March 1991.

viewpoints.[5] In addition, the EPA held four co-regulator workshops between February 2005 and April 2006 with state, interstate, and tribal partners, and gathered further input and feedback on the establishment, adjustment, and implementation of designated uses.[6]

C. Why is the EPA proposing changes to the Federal WQS regulation?

The core requirements of the current WQS regulation have been in place for over 30 years. These requirements have provided a strong foundation for water quality-based controls, including water quality assessments, impaired waters lists, and total maximum daily loads (TMDLs) under CWA section 303(d), as well as for water quality-based effluent limits (WQBELs) in NPDES discharge permits under CWA section 402. As with the development and operation of any program, however, a number of policy and technical issues have recurred over the past 30 years in individual standards reviews, stakeholder comments, and litigation that the EPA believes would be addressed and resolved more efficiently by clarifying, updating and revising the federal WQS regulation to assure greater public transparency, better stakeholder information, and more effective implementation.

From 2008 through 2010, the EPA held ongoing discussions with state and tribal partners and other stakeholders. These discussions addressed a wide-range of issues, from which a subset has been identified as significant areas of continuing concern. In 2010, the EPA held listening sessions with the public, states and tribes to obtain feedback on this subset of issues. The agenda, background material, list of participants and the public transcripts may be viewed at *http://water.epa.gov/lawsregs/lawsguidance/wqs_listening.cfm#records*. Section III of the EPA's proposal describes the key areas the EPA has chosen to address based on input received and the EPA's proposed regulatory approaches. The EPA believes that states, tribes, other stakeholders, and the public will benefit from clarification in these key areas to better understand and make proper use of available CWA tools and flexibilities, while maintaining open and transparent public participation. Clear regulatory requirements and improved implementation will provide a more transparent and well-defined pathway for restoring and maintaining the biological, chemical, and physical integrity of the nation's waters. The changes the EPA is proposing today add or modify specific regulatory provisions to address key areas described below.

III. Program Areas for Proposed Regulatory Clarifications

A. Introduction

As discussed in section II.C, the EPA has had ongoing dialogue with states, tribes and stakeholders on key issues that are central to assuring effective implementation of the WQS program. As part of this process, the Agency has considered several fundamental questions in evaluating opportunities to improve implementation of the WQS program including which recurring implementation issues would benefit most from a regulatory clarification or update, whether there are emerging issues that could be more effectively addressed through regulatory revisions, whether the regulation continues to have the appropriate balance of consistency and flexibility for states and tribes, and whether the resulting program effectively facilitates public participation in standards decisions.

As a result of this evaluation and consideration of continuing input from states, tribes and stakeholders, the EPA is proposing changes to key program areas of its WQS regulation at 40 CFR part 131 that the Agency believes will result in improved regulatory clarity and more effective program implementation, and lead to environmental improvements in water quality. This proposed rulemaking requests comment on regulatory revisions in the following six key issue areas: (1) Administrator's determination that new or revised WQS are necessary, (2) designated uses, (3) triennial reviews, (4) antidegradation, (5) WQS variances, and (6) compliance schedule authorizing provisions.

B. Administrator's Determinations That New or Revised WQS Are Necessary

1. The EPA Proposal

The EPA is proposing to amend paragraph (b) of § 131.22 to add a requirement that an Administrator's determination must be signed by the Administrator or his or her duly authorized delegate, and must include a statement that the document is a determination for purposes of section 303(c)(4)(B) of the Act.

2. Background and Rationale for Revision

Section 303(c)(4)(B) of the CWA provides the EPA Administrator with authority to determine that a new or revised WQS is necessary to meet the CWA requirements, typically in those situations where a state or tribe fails or is unable to act in a manner consistent with the CWA. Such a determination is made at the Administrator's discretion, after evaluating all relevant factors. An Administrator's determination triggers the requirement for the EPA to promptly prepare and publish proposed regulations setting forth a revised or new WQS for the waters of the United States involved, and for the EPA to promulgate such WQS unless the state or tribe adopts and the EPA approves such WQS before the EPA promulgation.

The EPA is concerned that the process whereby the Administrator determines that new or revised standards are necessary is not always clearly understood or interpreted by the public and stakeholders. In some instances, this lack of understanding has led to a mistaken conclusion that the EPA has made a CWA 303(c)(4)(B) determination when, in fact, the EPA did not make nor intend to make a determination. For example, Agency memoranda or documents articulating areas where states' WQS may need improvements have sometimes been construed or alleged by stakeholders to be official Administrator determinations that obligate the EPA to propose and promulgate federal WQS for such states. In order to ensure effective implementation of the national WQS program, to provide direct, clear, and transparent feedback on state and tribal actions, and to maintain an open and constructive dialogue with states, tribes and stakeholders on important water quality issues, it is essential that the EPA have the ability to provide feedback, and states and tribes have the opportunity to consider and evaluate the Agency's views, without fear of litigation triggering a duty on the part of the EPA to propose and promulgate WQS before either a state, tribe or the Agency believes such a course is appropriate or necessary.

The EPA believes that this revision would establish a more transparent process for the Administrator to announce any determination made under section 303(c)(4)(B) of the Act. Such a revision will allow the EPA to effectively provide direct and specific written recommendations to states and tribes on areas where WQS improvements should be considered,

[5] Proceedings from the national symposium on designated uses can be found at *http://water.epa.gov/scitech/swguidance/standards/uses/symposium_index.cfm*.

[6] A summary of the co-regulator workshops and a link to the use attainability analysis (UAA) case studies can be found at *http://water.epa.gov/scitech/swguidance/standards/uses/uaa/info.cfm*.

without the possibility that such recommendations will be construed as a determination that obligates the EPA to propose and promulgate new or revised standards.

The public's ability under Section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) to petition the EPA to issue, amend, or repeal a rule, would not be affected by this proposed revision.

The EPA invites comments on the proposed amendment to paragraph (b) of § 131.22. The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

C. Designated Uses

1. The EPA Proposal

First, the EPA is proposing to amend paragraph (g) at § 131.10 to provide that where a state or tribe adopts new or revised water quality standards based on a use attainability analysis (UAA), it must adopt the highest attainable use (HAU). States and tribes must also adopt criteria, as specified in § 131.11(a), to protect that use. The EPA is also proposing to add a definition of HAU at § 131.3(m). Specifically, the EPA is proposing to define HAU as ''the aquatic life, wildlife, and/or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, as determined using best available data and information through a use attainability analysis defined in § 131.3(g).''

Second, the EPA is making appropriate edits to § 131.10(g) to be clear that the factors listed in § 131.10(g) must be used when a UAA is required by § 131.10(j), and is restructuring § 131.10(k) to clearly articulate when a UAA is not required.

2. Background

Designated uses communicate a state's or tribe's environmental management objectives for its waters and drive on-the-ground water quality decision-making and improvements. To establish appropriate WQS, states and tribes define the water quality goals of a water body first by designating the use(s) and second by setting criteria that protect those uses. WQS are the foundation for other CWA requirements applicable to a water body, such as WQBELs for point source dischargers, as well as assessment of waters and establishment of TMDLs for waters not meeting applicable WQS. Designated uses play such an important role in the effective implementation of the CWA. The EPA believes it is essential to provide clear and concise regulatory requirements for states and tribes to follow (1) when adopting a use specified in section 101(a)(2) or sub-categories of such uses for a water body for the first time, or (2) when removing or revising a currently adopted use specified in section 101(a)(2) of the Act, or a sub-category of such a use. This is particularly important in light of recurring input and questions on this issue and the potential for conflicting interpretations and inconsistent case-by-case WQS program implementation.

Under section 303 (33 U.S.C. 1313) of the CWA, states and authorized tribes are required to develop WQS for waters of the United States within their state. WQS shall include designated use or uses to be made of the water and criteria to protect those uses. Such standards shall be established taking into consideration the use and value of waters for public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses, navigation and other purposes (CWA 303(c)(2)(A)). Designated uses are defined at 40 CFR 131.3(f) as the ''uses specified in water quality standards for each water body or segment whether or not they are being attained.'' A ''use'' is a particular function of, or activity in, a particular water body that requires a specific level of water quality.

Section 101(a)(2) of the CWA establishes the national goal that ''wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water'' be achieved by July 1, 1983. CWA section 303(c)(2)(A) requires state and tribal WQS to ''protect the public health or welfare, enhance the quality of the water and serve the purposes of this [Act].'' The WQS regulation at 40 CFR part 131 interprets and implements these provisions through requirements that WQS protect the uses specified in section 101(a)(2) of the Act unless those uses are shown to be unattainable, effectively creating a rebuttable presumption of attainability.[7] Thus, it has been the EPA's interpretation that the uses specified in section 101(a)(2) of the Act are presumed attainable unless a state or tribe affirmatively demonstrates through a UAA[8] that 101(a)(2) uses are not attainable as provided by one of six regulatory factors at § 131.10(g).[9]

The current WQS regulation at 40 CFR 131.10 requires states and tribes to specify appropriate uses to be achieved and protected; requires that WQS ensure attainment and maintenance of WQS of downstream waters; allows for sub-categories of uses (e.g., to differentiate between cold water and warm water fisheries) and seasonal uses; describes when uses are attainable; lists six factors of which at least one must be satisfied to justify removal of uses specified in Section 101(a)(2) that are not existing uses; prohibits removal of existing uses; requires states and authorized tribes to revise WQS to reflect uses that are presently being attained but not designated; and establishes when a state or tribe is or is not required to conduct a UAA. States and tribes have flexibility when managing their designated uses consistent with the CWA and implementing regulation.

More specifically, the current WQS regulation requires a UAA when designating uses that do not include the uses specified in section 101(a)(2) of the CWA, when removing a designated use specified in section 101(a)(2) of the Act, or when adopting sub-categories of such uses that require less stringent criteria. The phrase ''uses specified in section 101(a)(2) of the Act'' refers to uses that provide for the protection and propagation of fish (including aquatic invertebrates), shellfish, and wildlife, and recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish, and other aquatic life.[10] ''Sub-category of a use specified in section 101(a)(2) of the Act'' refers to any use that reflects the subdivision of uses specified in section 101(a)(2) of the Act into smaller, more homogenous groups of waters with the intent of reducing variability within the group. 40 CFR 131.10(c) provides that states and authorized tribes may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses. States and tribes have broad discretion to determine the appropriate level of specificity to use in identifying and defining designated uses, and nothing in this proposal is intended to narrow that discretion. However, the EPA has found that the clearer, more accurate, and

[7] *See* 40 CFR 131.2; 131.5(a)(4); 131.6(a),(f); 131.10(g), (j), (k).

[8] *See* 40 CFR 131.3(g). A UAA is a structured scientific assessment of the factors affecting the attainment of the use that may include physical, chemical, biological, and economic factors as described in § 131.10(g).

[9] EPA's ''rebuttable presumption'' that the uses specified in CWA section 101(a)(2) are presumed attainable, unless demonstrated to be unattainable through a UAA, has been upheld in *Idaho Mining Association v. Browner,* 90 F. Supp. 2d 1078 (D. Idaho 2000).

[10] *http://water.epa.gov/scitech/swguidance/standards/upload/2000_10_31_standards_shellfish.pdf.*

refined the designated uses are in describing the state's or tribe's objective for a water body, the more effective those use designations can be in driving the management actions necessary to restore and protect water quality.[11]

The current regulation at § 131.10(g) and (h)(1) provides that states and tribes may not remove a designated use if it would also remove an existing use unless a use requiring more stringent criteria is added. Existing uses are ''those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.'' Existing uses are known to be ''attained'' when both the use *and* the water quality necessary to support the use has been achieved.[12] The EPA recognizes, however, that all the necessary data may not be available. Where data may be limited, inconclusive, or not available, states and tribes have discretion to determine whether an existing use has been attained, based on either the use or the water quality. It is important to note that the prohibition on removing an existing use is not intended to apply to a situation where the state or tribe wishes to remove a use where removal would result in improving the condition of a water body. The intent of the regulation is to further the objective in CWA section 101(a) to ''restore and maintain the chemical, physical, and biological integrity'' of the nation's waters, not to prevent actions that make the water body more like its minimally impacted condition. For example, if a warm water fishery exists behind a dam, the existing use provision would not prevent the state from removing that dam because doing so would likely restore the natural cold water aquatic ecosystem.

3. Rationale for Revision

Adoption of Highest Attainable Use

As discussed above, states and tribes have flexibility to designate and revise uses in accordance with the provisions of § 131.10 which implements the requirement in 303(c)(2)(A) that standards shall be set to serve the purposes of the Act as set forth in Section) 101(a)(2) and 303(c)(2)(A). However, the EPA believes that it may be appropriate to provide greater clarity in the regulations implementing this requirement. For example, as part of the UAA process, a state or tribe may be able to demonstrate that a use supporting a particular class of aquatic life is not attainable. However, if some less sensitive aquatic organisms are able to survive at the site under current or attainable future conditions, the goals of the CWA are not served by simply removing the aquatic life use designation and applicable criteria without determining whether there is some alternate 101(a)(2) use or subcategory of such a use that is feasible to attain. The UAA process can be used to identify the highest aquatic life use that is attainable (i.e., highest attainable use). Under this proposal, the state or tribe would be required to designate that highest attainable use. However, as noted above, states and tribes have broad discretion to determine the appropriate level of specificity to use in identifying and defining designated uses, and nothing in this proposal is intended to narrow that discretion. To further clarify this in rule text, the proposal would add the following language to 131.10(g): ''To meet this requirement, States may, at their discretion, utilize their current use categories or subcategories, develop new use categories or subcategories, or adopt another use which may include a location-specific use.'' Thus, while a state or tribe may wish to establish a new or revised use category or subcategory to meet the proposed HAU requirement, the state or tribe could also comply with this requirement by adopting the highest attainable use from its currently established use categories or subcategories or by adopting a location-specific use, or another defensible approach.

The EPA's current regulation at 40 CFR 131.6(a) requires that each state's or tribe's water quality standards submitted to the EPA for review must include ''use designations consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the Act.'' Sections 131.10(g) and 131.10(j) implement the CWA by authorizing a state or tribe to designate uses that do not include the uses specified in section 101(a)(2) or to remove protection for a use specified in section 101(a)(2) (or subcategory of such a use) only through a UAA. If the state or tribe demonstrates through a UAA that a 101(a)(2) use, or a subcategory of such a use, is not attainable, then in order to comply with this regulatory requirement, the state or tribe will need to adopt use designations that continue to serve the 101(a)(2) goal by protecting the highest attainable use unless the state or tribe has shown that no use specified in section 101(a)(2) is attainable.

This proposal is intended to clearly articulate a requirement to adopt the HAU in the EPA's regulation. HAU is defined in this proposal as ''the aquatic life, wildlife, and/or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, as determined using best available data and information through a use attainability analysis defined in § 131.3(g).'' With this definition, the EPA recognizes and affirms the primary role accorded to states and tribes under the CWA in establishing categories of designated uses and assigning those uses to specific water bodies within their jurisdiction. The EPA intends for states and tribes to use their existing use classification scheme to meet the HAU requirement whenever the state or tribe determines that it is appropriate to do so. The EPA is not requiring states and tribes to revise their use categorization scheme by developing new use categories or subcategories, although states and tribes are encouraged to develop them if they find it practical and appropriate to do so. While the EPA believes that there is often value in specifying more narrowly targeted aquatic life uses (e.g., warm water or cold water fishery), the EPA also recognizes that it may not be practical for states or tribes to adopt fine gradations of aquatic life uses in many cases. The proposed rule would thus not affect a state or tribe's discretion to determine the appropriate level of specificity in establishing designated uses.

When adopting the HAU, states and tribes must also adopt criteria to protect that use, as specified in § 131.11(a). Requiring the HAU to be adopted as an essential part of the UAA process is important to adequately implement both CWA sections 101(a)(2) and 303(c)(2)(A). Where uses specified in section 101(a)(2) are unattainable, it is important that states and tribes still strive to attain uses that continue to serve the purposes of the Act and also enhance the quality of the water.

In determining the HAU to adopt in place of an unattainable aquatic life, wildlife, and/or recreation use, states and tribes should use the same regulatory factors (at 40 CFR 131.10(g)) and data analysis that were used to evaluate attainability. When conducting this review and soliciting input from the public, states and tribes should consider not only what is currently attained, but also what is attainable in the future after achievable gains in water quality are

[11] EPA notes that a use may meet the description of a ''sub-category of a use specified in section 101(a)(2) of the Act,'' but not provide an equal level of protection as a use specified in section 101(a)(2) of the Act. If a state wishes to designate such a sub-category, a UAA would be required, consistent with § 131.10(j).

[12] *See http://water.epa.gov/scitech/swguidance/standards/upload/Smithee-existing-uses-2008-09-23.pdf.*

realized. Such a prospective analysis may involve the following:

- Identifying the current and expected condition for a water body;
- Evaluating the effectiveness of best management practices (BMPs) and associated water quality improvements;
- Examining the efficacy of treatment technology from engineering studies; and
- Using water quality models, loading calculations, and other predictive tools.

Once a state or tribe has determined the HAU, there are several different approaches it may wish to consider for articulating the designated use in the relevant water quality standards regulations. The EPA's intent is for a state or tribe to have the flexibility to choose its preferred approach for articulating the HAU in regulation. The EPA provides the following example approaches, but does not intend states and tribes to be limited to only these approaches. The EPA invites comments on other approaches or examples that states and tribes could use when articulating the HAU, or examples of scenarios where the following approaches may not be appropriate. The EPA emphasizes that states and tribes are not required to develop new use categories or subcategories to meet the HAU requirement.

1. Use a refined designated use structure that is already adopted into state or tribal regulation: Where a state or tribe already has a refined designated use structure adopted into state regulations, they could consider adopting the ''next best'' attainable use that already exists in the use structure as the HAU. For example, consider a state with the following four aquatic life uses: exceptional, high, modified, and limited aquatic life use—each with associated dissolved oxygen criteria that protect the use. The state determines through a UAA (based on a factor at § 131.10(g)) that a particular stream cannot attain the designated ''high aquatic life use'' and associated dissolved oxygen criterion due to a low head dam and resulting impoundment. Because the dam cannot be removed or operated in such a way as to attain the dissolved oxygen criteria needed to protect the expected biological community at the site, the state adopts the ''modified aquatic life use'' and dissolved oxygen criterion to protect the revised use. The UAA documents that the ''modified aquatic life use'' reflects the HAU despite the disturbed condition of the water body.

2. Revise the current designated use structure to include more refined uses and/or sub-categories of uses: Some states or authorized tribes may not have a refined designated use structure adopted into their state or tribal regulations, but rather have a general use category expressed as a ''general aquatic life use,'' ''fish and wildlife use,'' ''recreation use,'' and so on. If a state or tribe finds that its only option upon determining that such a general use category is not attainable is to remove it altogether, a state or tribe may wish to consider revising its current designated use framework to include more refined uses and/or sub-categories, and adopt criteria to protect those uses.

For example, a state or tribe may be able to adequately demonstrate (consistent with 40 CFR 131.10(g)(2)) that natural conditions or water levels preclude the attainment of a use and associated water quality criteria. The state or tribe may document that it is infeasible to attain an aquatic life use associated with fish because the water is naturally intermittent. However, intermittent streams provide essential habitat for different types of aquatic life (e.g., aquatic invertebrates). Such an aquatic life use is likely attainable if not already attained. Therefore, in this scenario the state or tribe may wish to adopt a refined ''intermittent aquatic life use'' and criteria to protect that use in its statewide designated use framework because such a use category reflects the naturally expected aquatic life use for intermittent streams that could be applied to multiple streams in the state.

As another example, some states have chosen to refine their use categories to reflect the various biological communities that might be expected in a water body. If a state is interested in revising its current designated use structure, it may wish to define its uses based on the composition and structure of the aquatic life expected for each use with associated biological and dissolved oxygen criteria adopted into regulation. Incorporating such refinements into designated uses allows the state to tailor its use designations to reflect the actual biological community expected.

3. Designate a location-specific use and adopt criteria to protect that use: A state or tribe may determine that a use is unattainable for one particular parameter (e.g., altered pH due to highly mineralized geology, or a combined sewer overflow (CSO)-impacted use) or suite of parameters in a specific location. In such situations, the state or tribe may choose to adopt a use that more accurately reflects the location-specific expectations, such as a ''pH limited aquatic life use,'' a ''habitat limited aquatic life use,'' or a ''minerals limited aquatic life use.'' The state or tribe would then adopt a new set of criteria to protect that use, but could adopt all the same criteria levels as were protective of the original use, except for the parameter or parameters limiting the location-specific use. Such an approach would not require a state or tribe to add the location-specific use in its framework, but it could do so if later if it finds that other waters will fall into the same category.

The concept of HAU should not to be confused with ''site-specific criteria.'' A site-specific criterion is designed to protect the current unchanged designated use, but the criterion value may be different from the statewide or otherwise applicable criterion because it is tailored to account for site-specific conditions that may cause a given chemical concentration to have a different effect on one site than on another. By contrast, the criterion supporting a newly established highest attainable use is designed to protect the revised use associated with a different aquatic community expected in the water body.

In addition to this proposal requiring states and tribes to adopt the HAU, the EPA recommends that states and tribes consider the HAU during a triennial review. If new information becomes available during a triennial review to indicate that a use higher than what is currently designated is attainable, states and tribes should revise their WQS to reflect the HAU. As with the HAU requirement, states and tribes are not required to revise their currently established use categories during triennial review to allow for more refined designation of higher uses, though they may wish to consider doing so.

Revisions To Clarify When a UAA Is and Is Not Required

The EPA's proposal also revises § 131.10(g) to clarify that the factors at § 131.10(g) are only required to be considered when § 131.10(j) requires a UAA. The current language in § 131.10(g) is ambiguous on this point and thus has led to confusion as to whether § 131.10(g) applies to all use revisions or only those actions addressed in § 131.10(j). The EPA's 1998 ANPRM stated that the EPA's position, at the time, was that a UAA is not limited to actions addressed in § 131.10(j). However, the EPA has implemented the CWA to focus on uses specified in § 101(a)(2) and now believes that the better interpretation of its regulations is that the factors in 131.10(g) are only required to be considered when a state or tribe is demonstrating that a use specified in § 101(a)(2) or a subcategory of such a use is not attainable through a UAA.

The EPA's interpretation is supported by § 131.10(j), that explains when a UAA is required, and § 131.3(g) that defines a UAA as ''a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).'' When §§ 131.3(g), 131.10(g) and (j) are read together, it is clear that the factors at § 131.10(g) are only required to be considered when the state or tribe must do a UAA under § 131.10(j). This proposal adds language to §§ 131.10(g) and 131.10(j) to clarify the relationship between these two provisions and the intent of these provisions to implement CWA sections 101(a)(2) and 303(c)(2)(A). For all other designated uses, this proposal uses the term ''uses not specified in section 101(a)(2)'' to refer to uses discussed in section 303(c)(2)(A) but not included in section 101(a)(2). Section 303(c)(2)(A) and the EPA's regulation at § 131.10(a) requires the state or authorized tribe to take into consideration the ''use and value'' of water for public water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial and other purposes, and also taking into consideration their use and value for navigation. The UAA demonstration satisfies this requirement for uses specified in 101(a)(2). And while states and authorized tribes are not required by regulation to conduct a UAA using factors at § 131.10(g) when designating and removing a use not specified in 101(a)(2), the EPA recognizes that UAAs may provide valuable information to a state or authorized tribe when deciding how to manage their waters and demonstrate consideration of a water's ''use and value.''

Finally, the EPA is proposing to clarify § 131.10(k) to state when a UAA is *not* required. Specifically, § 131.10(k) is revised to articulate that a UAA is not required when a state or authorized tribe designates or has designated uses specified in section 101(a)(2) of the Act for a water body for the first time, removes a designated use that is not specified in section 101(a)(2) of the Act, or adopts a subcategory that requires criteria as stringent as the previously applicable criteria. The current structure of 131.10(j)(2) and 131.10(k) could result in situations where a UAA is not required by 131.10(k) but is required by 131.10(j)(2) thus leading to confusion. The EPA intends to eliminate this confusion by restructuring 131.10(k) as proposed.

The EPA invites comments on the proposed addition of 40 CFR 131.3(m), and the proposed amendments to § 131.10(g), § 131.10(j) and § 131.10(k). The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

D. Requirements of Triennial Reviews

1. The EPA Proposal

The EPA is proposing to amend the triennial review requirements of paragraph (a) of § 131.20 to clarify that a state or tribe shall re-examine its water quality criteria during its triennial review to determine if any criteria should be revised in light of any new or updated CWA section 304(a) criteria recommendations to assure that designated uses continue to be protected.

2. Rationale for Revision

Sections 303(a) through (c) of the CWA require that states and tribes adopt WQS applicable to their interstate and intrastate waters and that the EPA review and approve or disapprove these standards based on whether they are consistent with the Act. Section 303(c)(1) further requires states and tribes to hold public hearings at least once every 3 years for the purpose of reviewing applicable WQS and, as appropriate, modifying and adopting standards. The state or tribe decides whether and how to modify or adopt its WQS; however, any new or revised standards shall be submitted to the EPA for review and approval or disapproval.

The EPA adopted regulations in 1983 implementing these provisions at 40 CFR 131.20. This regulation requires that states and tribes hold a public hearing to review applicable WQS at least once every 3 years (i.e., a ''triennial review'') and, as appropriate, modify and adopt standards. Public hearings on WQS provide an essential opportunity for stakeholders and the general public to participate in the WQS-setting process to provide input and raise issues to appropriate officials. In addition, the regulation requires states and tribes to consider whether any new information has become available that indicates if uses specified in CWA section 101(a)(2) that were previously unattainable are now attainable. 40 CFR 131.20(c) provides that the results of these reviews be submitted to the EPA (see also § 131.6(f)).

Stakeholders have expressed concern that states and tribes may retain criteria in their WQS that are no longer protective of designated uses for multiple triennial review cycles, despite the availability of new or updated EPA CWA section 304(a) criteria recommendations. While states and tribes are not required to use EPA's 304(a) criteria recommendations, the EPA agrees that it is important for states and tribes to consider any new or updated 304(a) criteria as part of their triennial review, in order to ensure that state or tribal water quality criteria reflect current science and protect applicable designated uses. In this regard, 40 CFR 131.20(a) requires that any waterbody segment with WQS that does not include the uses specified in CWA section 101(a)(2) be re-examined and updated if new information becomes available to indicate that previously unattainable CWA section 101(a)(2) uses are now attainable. However, because 40 CFR 131.20(a) does not include a parallel statement regarding criteria that support these uses, states and tribes may not re-evaluate their existing criteria to ensure that the criteria continue to be protective of the designated uses when new or updated 304(a) criteria recommendations become available. As a result, the EPA is proposing to include an explicit reference to 304(a) recommended criteria at 131.20(a), to ensure that new or updated 304(a) criteria are considered during triennial review.

The EPA invites comments on the proposed amendments to paragraph (a) of § 131.20. The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

E. Antidegradation Implementation

The EPA is proposing to amend several provisions of § 131.12 related to implementing the antidegradation requirements. These include (1) clarifying the options available to states and tribes when identifying Tier 2 high quality waters, (2) clarifying that states and tribes must conduct an alternatives analysis in order to support state and tribal decision-making on whether to authorize limited degradation of high quality water, and (3) specifying that states and tribes must develop and make available to the public implementation methods for their antidegradation policies. The EPA is also proposing to add language to § 131.5(a) describing the EPA's authority to review and approve or disapprove state-adopted or tribal-adopted antidegradation policies. The language at § 131.5(a) will further specify that if a state or tribe has chosen to formally adopt implementation methods as water quality standards, the EPA would review whether those implementation methods are consistent with 131.12.

Background

Section 101(a) of the CWA emphasizes the prevention of water pollution and expressly includes the objective ''to restore and *maintain* the chemical, physical and biological integrity of the Nation's waters (33 U.S.C. 1251) (emphasis added). The antidegradation requirements that the EPA incorporated by regulation in 1983 into 40 CFR 131.12 implement the maintenance aspect of CWA section 101(a) and are an essential component of the overall WQS program. Although designated uses and criteria are the primary tools states and tribes use to achieve the CWA 101(a) goals, antidegradation complements these by providing a framework for maintaining existing uses, for protecting waters that are either attaining or are of a higher quality than necessary to support the CWA 101(a)(2) goals, and for protecting state/tribal identified Outstanding National Resource Waters (ONRWs). Antidegradation plays a critical role in allowing states and tribes to maintain and protect the valuable resource of high quality water by ensuring that decisions to allow a lowering of high quality water are made in a transparent public manner and are based on a sound technical record.

In the Water Quality Act of 1987, Congress expressly affirmed the principle of antidegradation that is reflected in section 101 of the Act. In those amendments to the CWA, Congress incorporated a reference to antidegradation policies in section 303(d)(4)(B) of the Act (33 U.S.C. 1313(d)(4)(B)): ''Standard Attained—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable WQS, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any WQS established under this section, or any permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section'' (emphasis added). This provision not only confirms that an antidegradation policy is an integral part of the CWA, but also explains the relationship of the antidegradation policy to other CWA regulatory programs.[13] Antidegradation reviews are applicable to revisions to effluent limitations based on a TMDL, wasteload allocation, or water quality standard, but they are not required for revisions to a TMDL, wasteload allocation, or water quality standard.[14]

High quality waters provide support for aquatic life and recreation and support unique and significant ecologies and species habitat. These attributes confer a special degree of resiliency and resistance to adverse effects, particularly as the nation's waters face an increasing degree of stress from anthropogenic influences. Therefore, maintenance and protection of high quality waters has never been more important.

Protection of waters that meet or exceed levels necessary to support the CWA uses is central to supporting both economic and community growth and sustainability. Such waters contribute to our public health, aquatic ecosystems, drinking water supplies, and to the welfare of families and communities. The health and growth of tourism, recreation, fishing, and businesses and the jobs they create rely on a sustainable source of clean water. Degradation of water quality may result in increasing public health risks, declining aquatic communities and ecological diversity, and increasing treatment costs that must be borne by ratepayers and local governments. Maintenance of waters that exceed levels necessary to support the CWA uses can sometimes save time and economic resources for a community in the long-term. Using an antidegradation program to prevent the degradation of a water body may be more cost-effective and efficient than long-term restoration efforts. In addition, maintaining a water body in its initial high quality condition helps ensure the preservation of unique attributes that may ultimately be impossible to fully restore in a number of situations.

Currently, 40 CFR 131.12 requires states and tribes to adopt an antidegradation policy and identify implementation methods for that policy. The state's or tribe's policy must provide protection for all existing uses, hereafter referred to as ''Tier 1'' protection (40 CFR 131.12(a)(1)). The policy must also require the maintenance and protection of high quality (''Tier 2'') waters unless the state or authorized tribe finds that ''allowing lower water quality is necessary'' to accommodate ''important economic or social development in the area in which the waters are located,'' a process hereby referred to as ''Tier 2 review'' (40 CFR 131.12(a)(2)). Additionally, the policy must provide for the maintenance and protection of water quality in ONRWs, identified by the state or tribe, hereinafter referred to as ''Tier 3'' waters (40 CFR 131.12(a)(3)). This proposal focuses on different aspects of state and tribal implementation methods to ensure effective and transparent implementation of Tier 2 high quality water antidegradation protection provisions.

In this regard, the EPA indicated in its 1998 ANPRM that ''on a national scale, antidegradation is not being used as effectively as it could be,'' a concern that continues today and is echoed by stakeholders who have identified antidegradation as an underused component of water quality protection. Although the federal antidegradation regulation is intended to help states and tribes protect and maintain high quality waters, the number of waters that are identified as impaired continues to grow. The benefits of high quality waters may be jeopardized if states and tribes do not consider the long-term consequences of lowering water quality or evaluate the alternatives that might be available to reduce the need to accommodate increased pollution.

While the EPA has issued guidance in the past to help facilitate state and tribal implementation of the regulatory antidegradation provisions, the EPA received substantial feedback from stakeholders that existing CWA antidegradation regulatory provisions and related guidance have not been fully successful in ensuring consistent and effective implementation of Tier 2 high quality water protections. Moreover, states have recognized the limits of national guidance in the area of CWA implementation. Most recently on March 30, 2011, the Environmental Council of the States published a resolution entitled ''Objection to U.S. Environmental Protection Agency's Imposition of Interim Guidance, Interim Rules, Draft Policy and Reinterpretation Policy'' in which it states that the ''EPA should minimize the use of interim guidance, interim rules, draft policy and reinterpretation policy and eliminate the practice of directing its regional or national program managers to require compliance by states with the same in the implementation of delegated programs.'' For these and the other reasons discussed above, the EPA is, therefore, revising its regulation to update the requirements for transparent and effective state and tribal antidegradation implementation.

[13] *PUD No. 1 of Jefferson County v. Washington Department of Ecology,* 511 U.S. 700, 705 (1994) (''A 1987 amendment to the Clean Water Act makes clear that section 303 also contains an 'antidegradation policy . . .'").

[14] *Native Village of Point Hope* v. *U.S. Envtl. Prot. Agency,* No. 3:11–cv–00200–TMB, slip op. at 24–25 (D. Alaska Sept. 14, 2012).

1. The EPA Proposal—Part 1: Identification of High Quality Waters

The EPA is proposing to add paragraph (b)(1) to § 131.12 to provide that high quality waters may be identified on a parameter-by-parameter basis or on a water body-by-water body basis, as long as the state or tribal implementation methods ensure that waters are not excluded from Tier 2 protection solely because not all of the uses specified in CWA section 101(a)(2) are attained. The EPA's established view is that either method of identifying high quality waters is acceptable, but is proposing today to codify that flexibility for states and tribes into regulation. By ''the uses specified in CWA section 101(a)(2)'' the EPA means the uses and functions encompassed within the CWA section 101(a)(2), such as aquatic life support, wildlife support, consumption of aquatic life, and recreation.

The nationally applicable water quality standards regulation at § 131.12 describes high quality waters as those where the quality of the waters exceed levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water (i.e., the CWA goals articulated in section 101(a)(2)). States typically use one of two approaches to identify high quality waters. While the EPA specified in the ''Water Quality Guidance for the Great Lakes System'' that high quality waters subject to 40 CFR part 132 must be identified using a parameter-by-parameter approach, the WQS regulation applicable to all states and tribes (at 40 CFR part 131) does not currently specify how a state or tribe must identify its high quality waters for purposes of the antidegradation requirements. States and tribes using a parameter-by-parameter approach identify which waters are of high quality for purposes of a Tier 2 review at the time the activity that would lower water quality is proposed. Under this approach, when an activity is proposed that would potentially lower water quality in any high quality water, the state or tribe would determine for which parameters the water quality is better than applicable criteria developed to support the CWA 101(a)(2) uses. Each parameter for which water quality would be lowered by the permitted activity is considered independently and, once a parameter is determined to exist at a level that is better than applicable criteria, the state or tribe would conduct a Tier 2 review for that parameter. In contrast, states and tribes using a water body-by-water body approach typically identify high quality waters in advance on a list by weighing a variety of factors to classify a water body's overall quality. If an activity is proposed that would potentially lower water quality, the state would first determine if that water body is on its Tier 2 list, and thus eligible for Tier 2 review.

The EPA has found, however, that it is currently possible for high quality waters to be identified on a water body-by-water body basis in a manner that the EPA believes may be contrary to the intent of the antidegradation provisions. In some cases, states or tribes have implemented antidegradation such that, where a water body is listed on the CWA section 303(d) list based on one or more parameters affecting only one of the CWA 101(a)(2) uses, the state or tribe automatically considers the water no longer high quality. As a result, the state or tribe would no longer conduct Tier 2 reviews before allowing a lowering of water quality for any parameter. However, individual Section 303(d) listings can be a potentially poor indicator of the overall quality of a surface water because, although one or more of the uses specified in 101(a)(2) is listed as impaired, one or more other uses specified in 101(a)(2) might still be attained and the water quality may be higher than necessary to support such use(s). Such a means of identifying high quality waters would categorically deny Tier 2 protection to a water body that is still of high quality with respect to other uses specified in CWA 101(a)(2).

If a water body can be excluded from Tier 2 protection solely because one of the uses specified in 101(a)(2) is not being attained, without a holistic evaluation of the water body, it is possible that a large number of state and tribal waters would never be subject to Tier 2 review for any parameter. Yet those waters may in fact be high quality waters relative to other unimpaired uses. Thus, such water bodies could be degraded further without a public participation process. For example, mercury is widely prevalent in U.S. waters and is known to bioaccumulate in fish tissue, thus affecting the water body's ability to support protection and propagation of aquatic life. A recent statistically based EPA sampling survey found predator species fish tissue in 49 percent of the sampled population of lakes in the conterminous United States with surface areas greater than or equal to 1 hectare exceeded the EPA's recommended 0.3 ppm tissue-based mercury criterion (''National Study of Chemical Residues in Lake Fish Tissue,'' EPA 823–R–09–006). If all states and tribes used an approach for identifying high quality water whereby any impairment rendered the water body ineligible for Tier 2 protection, almost half of the lakes would automatically be excluded from Tier 2 high quality water protection. The EPA's view is that this approach would not be consistent with the objectives of the CWA and the intent of the antidegradation regulation.

The EPA recognizes that there may be multiple ways for a state or tribe to develop a water body-based approach for identifying high quality waters consistent with the goals of the CWA and the antidegradation regulation. The EPA understands that in some cases, § 131.12(a)(2) has been interpreted to mean that if any one of the uses reflecting CWA 101(a)(2) goals is not supported, that the water body as a whole cannot be considered high quality. The regulatory language, however, is derived from the language in CWA 101(a)(2) that specifies it is a national goal to achieve water quality that provides for ''the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.'' The intent of this CWA statement is to strive towards all of the uses specified in the provision and not to stop striving towards all of the uses simply because one of them is not being achieved. The EPA's proposal and interpretation of 40 CFR 131.12(a)(2) is consistent with the intent of the CWA.

Rather than excluding a water body from Tier 2 protection solely because not all of the uses specified in CWA section 101(a)(2) are attained, the EPA would expect the state or tribe to consider a combination of chemical, biological, and physical characteristics in identifying high quality waters. In other words, the EPA would expect the state or tribe to use all the relevant available data to conduct an overall holistic assessment of these characteristics in order to determine whether a water body would receive Tier 2 protection. Some of the factors a state or tribe may consider include, but are not limited to, existing aquatic life uses including aquatic assemblages, habitat, hydrology, geomorphic processes, and landscape condition; existing recreational uses and recreational significance; and the overall value and significance of the water body from an ecological and public-use perspective. Numerous tools, such as biological, habitat, hydrologic, geomorphic, and landscape assessments or the environmental impact statement rating system, could be useful to states and tribes in making and supporting these judgments.

For purposes of better understanding this proposal, consider the following examples.

• *Water Body A has aquatic life and recreational designated uses and is listed as impaired for methylmercury and bacteria, pursuant to CWA section 303(d).* Under this proposed rule, a state or tribe using a water body-by-water body approach could exclude Water Body A from its Tier 2 list because the state or tribe could show that high levels of methylmercury prevent the attainment of protection and propagation of fish, shellfish and wildlife, *and* that high levels of bacteria prevent attainment of recreation in and on the water.

• *Water Body B has aquatic life and recreational designated uses and is listed pursuant to CWA section 303(d) as impaired for methylmercury, but not for bacteria or any other pollutant necessary to protect recreation.* Under a water body-by-water body approach, the proposed rule would prohibit the state or tribe from excluding Water Body B from its Tier 2 list solely because the water body cannot attain protection and propagation of aquatic life due to methylmercury. Water Body B is still attaining recreation in and on the water as specified in section 101(a)(2) of the Act.

The EPA invites comments on the proposed addition of paragraph (b)(1) to § 131.12. Additionally, the EPA is considering whether to specify how a state or tribe determines for which parameters Tier 2 review must be conducted depending on the approach used to identify high quality waters. The EPA requests comment on whether, once a high quality water is identified, the Tier 2 review process for that water body should differ depending on the approach used to identify it as high quality. As the EPA has explained before in the ANPRM and in the ''Water Quality Guidance for the Great Lakes System'' (40 CFR part 132), for high quality waters identified through the parameter-by-parameter approach, states and tribes conduct Tier 2 reviews for all parameters for which the water quality has been identified as better than the applicable criteria developed to support the CWA 101(a)(2) uses. Each parameter for which water quality would be lowered by the permitted activity is considered independently and, once a parameter is determined to exist at a level that is better than applicable criteria developed to support the CWA 101(a)(2) uses, the state or tribe would conduct a Tier 2 review for that parameter.

The EPA has made a variety of different statements about how Tier 2 reviews are conducted once the water body is identified as Tier 2 using a water body-by-water body approach.[15] [16] Thus, for the water body-by-water body approach the EPA could specify that Tier 2 reviews must be conducted for all parameters for which the water quality has been identified as better than the applicable criteria developed to support the CWA 101(a)(2) uses.

Alternatively, the EPA could specify that for waters identified as high quality on a water body-by-water body basis, Tier 2 reviews are only required for parameters associated with the 101(a)(2) uses currently being supported. For example, in Water Body B above, a Tier 2 review would only be required for each parameter that is better than the applicable criteria to protect recreation. And, a Tier 2 review would not be required for any parameter only associated with the aquatic life use (i.e., and not also associated with the recreation use).

The EPA could also specify that states and tribes have discretion on how to conduct the Tier 2 reviews. The EPA also invites comments on any other options it should consider or on the interpretations expressed in this section.

2. The EPA Proposal—Part 2: Alternatives Analysis

The EPA is proposing to add paragraph (b)(2) to 40 CFR 131.12 to ensure that states and tribes will only make a finding that lowering water quality is necessary, as required in § 131.12(a)(2), after conducting an alternatives analysis that evaluates a range of non-degrading and minimally degrading practicable alternatives that have the potential to prevent or minimize the degradation associated with the proposed activity. This proposal also provides that if a state or tribe can identify any practicable alternatives, the state or tribe must choose one of those alternatives to implement when authorizing a lowering of high water quality.

Section 131.12(a)(2) also provides that high quality water shall be maintained and protected unless the state or tribe finds (after satisfaction of public participation and intergovernmental coordination requirements) that ''allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located'' (40 CFR 131.12(a)(2)). As discussed previously, this process is called a Tier 2 review. Tier 2 review calls for the state or tribe to investigate two questions: (1) Whether allowing lower water quality is necessary to accomplish the proposed activity, typically by examining alternative ways of accomplishing the activity through an alternatives analysis; and (2) whether the proposed activity that will result in lower water quality will accommodate important economic or social development, through a socio-economic analysis. States and tribes may determine the order in which to complete the two aspects of the finding. In addition, states have discretion to decide there is no need to answer the second question if the answer to the first question is ''no.'' For example, a state or tribe may choose to first ask whether lowering of water quality is necessary to accomplish the proposed activity, and if the answer is ''no,'' decide at that point not to investigate whether the proposed activity will accommodate important economic or social development. While this finding is a state or tribal responsibility, the EPA recognizes that states and tribes may establish processes requiring the entity responsible for conducting the proposed activity to provide information or conduct the necessary evaluations.

Although the existing regulation implies that the state or tribe must have a means of evaluating whether a lowering of water quality is necessary to accomplish the proposed activity, currently there is no explicit requirement to conduct an alternatives analysis. Even if a state or tribe conducts an alternatives analysis, the regulation does not specify that, where there is a practicable alternative, the state or tribe must select an alternative for implementation. For these purposes, the term ''practicable'' means that the alternatives considered must be available for the proposed activity, technologically possible, able to be done or put into practice successfully at the site in question, and economically viable. This lack of specificity can result in situations where a state or tribe does not evaluate less-degrading or non-degrading alternatives to the proposed activity, and thus lacks a reasoned basis for determining if the proposed lowering of water quality is necessary to accomplish the proposed activity, or not. The EPA's view is that this lack of specificity can lead to state or tribal decisions to lower water quality without appropriately making a finding that a

[15] See ''EPA Region VIII Guidance: Antidegradation Implementation; Requirements, Options, and EPA Recommendations Pertaining to State/Tribal Antidegradation Programs,'' August, 1883, page 14, *http://water.epa.gov/scitech/swguidance/standards/adeg/upload/Region8_ch2_pg5-20.pdf.*

[16] See ''Proposed Water Quality Standards for Kentucky,'' November 2002, page 68977, *http://www.epa.gov/fedrgstr/EPA-WATER/2002/November/Day-14/w28922.htm.*

lowering is necessary, contrary to section 131.12(a)(2).

This issue was considered carefully as part of the development of updated water quality requirements for the Great Lakes states in 1995. The regulation at 40 CFR part 132, Appendix E, addresses it by requiring that any entity seeking to degrade high water quality must submit an antidegradation demonstration for consideration by the state. This demonstration includes an analysis identifying any cost-effective pollution prevention alternatives and techniques, as well as an analysis identifying alternative or enhanced treatment techniques (and their relative costs) that are available to the entity and that would eliminate or significantly reduce the extent to which the increased loading results in a lowering of water quality. States and tribes should tailor the level of detail and documentation in antidegradation reviews to the specific circumstances encountered. The state or tribe then uses that information to determine whether or not the lowering of water quality is necessary.

Under the approach proposed today, the state or tribe would conduct its alternatives analysis by considering a range of non-degrading and minimally degrading practicable alternatives to the proposed activity. Similar to the alternatives analysis provided for in 40 CFR part 132, this evaluation would include a consideration of any non-degrading or minimally degrading cost-effective pollution prevention alternatives and enhanced treatment techniques, but would not be limited to those. For example, alternatives could include no discharge, pollution prevention measures, process changes, reduction in the scale of the project, advanced or different treatment technologies, water recycling and reuse, land application, seasonal or controlled discharge options avoiding critical water quality periods, and alternative discharge locations, if such measures were practicable.

Once the state or tribe has identified a range of practicable alternatives, the state or tribe would evaluate the alternatives in terms of the extent of degradation that would result. By initially considering practicable alternatives that represent a range from non-degrading to minimally degrading as opposed to simply identifying the single least degrading alternative, the state or tribe then has a basis to make the required finding, considering the implications and technological and economic practicability of the alternatives more holistically, and considering any impacts beyond the direct effects on water quality, such as cross-media impacts (e.g., impacts on land due to land application of pollutants found in water). This will allow the state or tribe to determine whether the lowering of water quality is necessary to accommodate important economic or social development per Part 131.12(a)(2). As reflected in the Great Lakes System regulation at Part 132, the EPA believes states and tribes should tailor the level of detail and documentation of alternatives analyses in antidegradation reviews to the significance and magnitude of the particular circumstances encountered.

The EPA invites comment on the proposed addition of paragraph (b)(2) to § 131.12. The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

3. The EPA Proposal—Part 3: Developing and Making Available to the Public Antidegradation Implementation Methods

The EPA is proposing to add paragraph (b) to 40 CFR 131.12 to specify that states and tribes must develop and make available to the public antidegradation implementation methods to improve program implementation, ensure consistency with the CWA, and provide transparency as to applicable state and tribal antidegradation review requirements. The EPA is also making changes to language in § 131.5(a) describing the EPA's authority to review and approve or disapprove state-adopted or tribal-adopted antidegradation policies. The language in § 131.5(a) further specifies that if a state or tribe has chosen to formally adopt implementation methods as water quality standards, the EPA would review whether those implementation methods are consistent with § 131.12. In addition to the proposed requirements included in this proposal, the EPA is considering and requesting comment on whether the EPA should include a requirement that antidegradation implementation methods be adopted as WQS and thus subject to the EPA's review and approval or disapproval. Alternatively, the EPA is considering and requesting comment on whether the EPA should specify that states and tribes may, but are not required to, adopt antidegradation implementation methods as WQS.

Currently there is confusion whether the existing regulations require states and tribes to adopt antidegradation implementation methods as WQS. Stakeholders have raised concerns that some states and tribes have not developed or made publically available antidegradation implementation methods, despite the fact that the regulation requiring this was established in 1983. Specifically, they are concerned that the absence of such methods reduces transparency in the implementation of states' and tribes' policies, and potentially limits the ability to ensure protection of existing uses, high quality waters, and ONRWs to the full extent required by the regulation. The CWA at section 101(e) specifically states that ''public participation in the development, revision, and enforcement of any regulations, standard, effluent limitation, plan, or program established . . . under this Act shall be provided for, encouraged, and assisted. . . .'' The EPA encourages states and tribes to provide a robust and transparent process for developing and making available to the public their antidegradation implementation methods and for implementing those methods in specific cases.

Section 501(a) of the CWA (33 U.S.C. 1361(a)) authorizes the EPA Administrator to ''prescribe such regulations as are necessary to carry out [her] functions under this Act.'' The CWA, under section 303(c), also specifies that the EPA Administrator must review and approve new or revised WQS after determining they are consistent with applicable requirements under the CWA. The EPA believes that antidegradation implementation methods are an important component of implementing antidegradation policies. Thus, the EPA is considering and requesting comment on whether the EPA should include a requirement that implementation methods be formally adopted as WQS and thus subject to the EPA's review and approval or disapproval. Formal adoption of implementation methods as WQS, along with EPA review under section 303(c) of the Act, would help ensure the consistent and effective implementation of the state or tribe's antidegradation provisions so that waters will be maintained and protected in accordance with the objectives of the Act.[17] At the same time, the EPA acknowledges the primary role of states and tribes in establishing and implementing water quality standards. The EPA is thus alternatively considering and requesting comment on whether to specify in rule that states and tribes may, but are not required to, adopt antidegradation implementation methods as WQS subject to EPA approval. In this case,

[17] As of 2013, the EPA is aware of 25 states that have adopted antidegradation implementation methods entirely into rule.

states and tribes must develop antidegradation implementation methods, and must make them available to the public, but they would not be subject to EPA review and approval or disapproval unless the state or tribe chose to formally adopt them as WQS.

Additionally, antidegradation is an essential part of WQS and state and tribal approaches to implementing antidegradation requirements may have direct implications for NPDES permits, as well as other federal permits and licenses for activities that affect water quality. The EPA believes that this may be an additional reason why the regulations should require states and tribes to formally adopt, after providing an opportunity for public involvement, and obtain EPA approval for antidegradation implementation methods. Lastly, state and tribal antidegradation programs that have antidegradation implementation methods adopted into regulations are more transparent to stakeholders and the public, as well as provide greater clarity to regulated industry.

The ''Water Quality Guidance for the Great Lakes System'' (40 CFR part 132) provides that an acceptable antidegradation policy and implementation methods are required elements of a state's or tribe's WQS program for waters of the Great Lakes system. That regulation requires that Great Lakes states and tribes adopt provisions into their policy and implementation methods that are consistent with a list of specifications, including details on how high quality waters are to be identified and on the components of antidegradation Tier 2 reviews.

Consistent with this ''Water Quality Guidance for the Great Lakes System'' requirement and for the reasons explained, the EPA is considering and seeking comments on a revision to the antidegradation regulation at 40 CFR 131.12 that would require states and tribes to adopt antidegradation implementation methods in order to improve program implementation, ensure consistency with CWA, and provide transparency as to applicable state or tribal antidegradation review requirements. If the EPA were to finalize such a requirement, the EPA would expect that a state or tribe's adopted implementation methods would describe how the state or tribe intended to implement each aspect of its policy, consistent with § 131.12(a), as well as how antidegradation decisions would be documented. This would provide sufficient information so that the public and the EPA would understand the extent to which activities affecting water quality are being authorized consistent with the state's or tribe's antidegradation policy and other CWA requirements.

The EPA invites comments on the proposed addition of paragraph (b) to § 131.12. As previously mentioned, there is confusion whether the existing regulations require states and tribes to adopt antidegradation implementation methods as WQS. The EPA requests comment on whether the EPA should require, as part of Section 131.12(b), that implementation methods be adopted as WQS and thus subject to the EPA's review and approval or disapproval. If the EPA makes adoption of implementation methods a requirement, the EPA is also considering corresponding revisions to sections 131.5(a) and 131.6(d). Specifically, the EPA requests comment on whether a corresponding revision should be made to section 131.6(d) to clarify that implementation methods are one of the minimum requirements for a water quality standards submission. Alternatively, the EPA is requesting comment on whether the EPA should explicitly specify in regulation that states and tribes are not required to adopt antidegradation implementation method as WQS. Finally, the EPA invites comments on any other options it should consider or on the interpretations expressed in this section.

4. Minimum Elements of an Antidegradation Implementation Method

The EPA's basis for taking approval or disapproval action on a state's or a tribe's antidegradation policy is whether the policy is consistent with the CWA and the water quality standards regulations at 40 CFR § 131.12. While the current regulations do not require states or tribes to adopt antidegradation implementation methods as water quality standards, if a state or tribe chooses to do so, the EPA would review a state's or tribe's implementation methods on the basis of ensuring that the methods do not undermine the state's or tribe's own antidegradation policy. This proposed revised antidegradation regulation continues to provide for a wide range of state and tribal approaches to antidegradation. States and tribes have considerable discretion in how they address each of the elements of antidegradation implementation specified in the regulation. To facilitate development of implementation methods, the EPA is providing in this preamble a list of the areas states' and tribes' implementation methods would need to address, at a minimum, to be consistent with the WQS regulation. This list is based on requirements currently found in the federal antidegradation regulation, as well as proposed requirements found in this action. Again, how states and tribes address each of these areas in their methods is within their discretion, as long as it does not undermine their antidegradation policy or is otherwise inconsistent with the Act or EPA's regulations.

a. Scope and applicability: the state or tribe should describe the scope and applicability of their antidegradation policy.

b. Existing uses protection: the state or tribe will ensure the maintenance and protection of all existing uses and the water quality necessary to protect the existing uses.

c. High quality water protection

i. Identification of high quality water: the state or tribe will identify high quality waters on a parameter-by-parameter basis or a water body-by-water body basis, as long as the state's or tribe's implementation methods ensure that waters are not excluded from Tier 2 protection solely because not all of the uses specified in CWA section 101(a)(2) are attained.

ii. Alternatives analysis and social/economic analysis: the state or tribe will determine whether the lowering of water quality that would result from a proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located through an alternatives analysis and a social and/or economic analysis.

iii. Public participation and intergovernmental coordination: the state or tribe will ensure full satisfaction of the public participation and intergovernmental coordination provisions of the state's or tribe's continuing planning process in any finding that will allow lower water quality.

iv. Requirements for point and nonpoint sources: the state or tribe will ensure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control when allowing a lowering of water quality.

d. ONRW protection: the state or tribe will ensure the maintenance and protection of water quality for waters identified as ONRWs.

e. Thermal Discharges: The state or tribe will ensure consistency with Section 316 of the Act in cases that involve potential water quality impairment associated with thermal discharges.

5. How does this proposal affect states or authorized Tribes for which the EPA has promulgated antidegradation implementation methods?

The revised WQS regulation will apply to all states, authorized tribes, and territories, regardless of whether or not the EPA has previously promulgated an antidegradation policy or implementation methods for the state or tribe. Therefore, any previously promulgated antidegradation policies or implementation methods may require revision to meet the new requirements of Section 131.12.

F. WQS Variances

1. Background

The EPA has encouraged states and tribes to utilize WQS variances [18] (hereafter referred to as ''variances''), where appropriate, as an important WQS tool that provides states and tribes time to make progress towards attaining a designated use and criteria. The EPA has offered input and support for variances through Office of General Counsel legal decisions,[19] guidance, memoranda, and approval actions for many years. These documents specifically explain the EPA's interpretation that variances may be granted if the state or authorized tribe demonstrates that the variance meets the same requirements as a permanent [20] designated use change, even though the WQS regulation lacks explicit provisions on the issue. As a result, the EPA has heard from states, tribes, and stakeholders that there is confusion, inconsistency, and mixed interpretations about how, when, and where variances may be used appropriately (e.g., with regard to nutrients and implementation of numeric nutrient criteria). In particular, the EPA has found that this WQS tool is underutilized. For example, since tracking WQS variance submittals in 2004, four EPA Regions have never received a WQS variance submittal. However, the EPA has found that where states and tribes and their stakeholders have more specificity in regulation regarding variances, such as those states and tribes covered by the ''Water Quality Guidance for the Great Lakes System'' (i.e., Great Lakes Initiative) rulemaking at 40 CFR part 132, they are successfully adopting and submitting WQS variances. This proposed rule is intended to provide this specificity nationally.

The CWA specifies a national goal at Section 101(a) to restore and maintain the chemical, physical and biological integrity of the Nation's waters and an interim goal in Section 101(a)(2) that, ''wherever attainable,'' water quality provide for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water. In implementing the CWA, the regulation at 40 CFR 131.10 establishes provisions relating to the management of designated uses. In 1977, an Office of General Counsel legal decision considered the practice of temporarily downgrading the WQS as it applies to a specific discharger rather than permanently downgrading an entire water body or waterbody segment(s) and determined that such a practice is acceptable under the EPA's existing regulations as long as the variance is adopted consistent with the substantive and procedural requirements for permanently downgrading a designated use. In other words, a state or tribe may change the standard in a more targeted way rather than remove the standard all together. The EPA further explained that it would be appropriate to grant a variance based on any of the six factors for removing a designated use as listed in § 131.10(g).[21]

The state practice described in the Office of General Counsel legal decision became known as adopting a ''variance'' to WQS. Specifically, a variance is a time-limited designated use and criterion that is targeted to a specific pollutant(s), source(s), and/or water body or waterbody segment(s) that reflects the highest attainable condition during the specified time period. Variances are different from changes to the designated use and associated criteria in that they are intended as a mechanism to provide time for states, authorized tribes and stakeholders to implement adaptive management approaches that will improve water quality where the designated use and criterion currently in place are not being met, but still retain the designated use as a long term goal. Variances are limited in scope and are an environmentally preferable tool over a designated use change because variances retain designated use protection for all pollutants as they apply to all sources with the exception of those specified in the variance. Even the discharger who is given a variance for one particular constituent is required to meet the applicable criteria for all other constituents. The variance is given for a limited time period and the discharger must either meet the WQS upon the expiration of this time period or the state or tribe must adopt a new variance or re-justify the current variance subject to EPA review and approval. Thus, when properly applied, a variance can lead to improved water quality over time, and in some cases, full attainment of designated uses due to advances in treatment technologies, control practices, or other changes in circumstances, thereby furthering the objectives of the CWA.

Presently, the nationally applicable WQS regulation only mentions variances in 40 CFR 131.13. This provision indicates that variance policies are general policies affecting the application and implementation of WQS, and that states and tribes may include variances policies in their state and tribal standards, at their discretion. The EPA provided variance procedure requirements when it promulgated WQS for Kansas (§ 131.34(c)), Puerto Rico (§ 131.40(c)), and the Great Lakes System (40 CFR part 132, Appendix F, Procedure 2). However, the nationally applicable regulation does not explicitly address questions such as when a variance can be granted, how a variance must be justified, what is required during the term of the variance, or for how long a variance can be granted. The EPA's established position has been that variances, as time-limited and narrow use revisions, are appropriate WQS tools that must go through public review and require the EPA's review and approval.[22] This position is supported by the EPA's practice regarding variances.[23] Today, we recognize a more direct link to the CWA Section 101(a)

[18] The EPA distinguishes WQS variances, as described in today's proposed rulemaking, from variances as described in the EPA's permitting regulation at §§ 122.2 and 125.3.

[19] The EPA's memoranda discussing variances are available on the EPA's Web site at *http://water.epa.gov/scitech/swguidance/waterquality/standards/handbook/chapter05.cfm#section3.*

[20] ''Permanent'' is used here and throughout this section to contrast between the time-limited nature of variances and designated use changes in accordance with 40 CFR 131.10 that require a revision to a State's water quality standards to reverse. In accordance with 40 CFR 131.20, waters that ''do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every 3 years to determine if new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly.''

[21] Variances in Water Quality Standards, March 15, 1985, Memo from Edwin L. Johnson, Director of the Office of Water Regulations and Standards, to the Regional Water Division Directors and the Advanced Notice of Proposed Rulemaking at 63 FR 36759.

[22] The EPA addressed variances in its Kansas and Puerto Rico promulgations and part 132 Great Lakes Water Quality Guidance regulations (Published March 23, 1995, *http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=105020ee867fe139a8d0965b23bf7557&rgn=div5&view=text&node=40:23.0.1.1.19&idno=40*).

[23] The EPA's WQS Handbook, 1994: *http://water.epa.gov/scitech/swguidance/standards/handbook/chapter05.cfm#section3*

goal of ''restore and maintain'' for variances. WQS variances are consistent with the ''restore'' aspect of the goal since variances are intended to allow incremental environmental progress in achieving designated uses. As described in detail in section III.F.2, the EPA is proposing a set of variance provisions that are in many ways parallel to the regulations in 131.10, but are tailored to better fit the circumstances where variances will allow for environmental progress toward achieving the goals of the CWA. The EPA notes that its understanding and past practice allows for variances whether or not those uses are specified in Section 101(a)(2), however, the demonstration may differ.

States and tribes have expressed that variances are useful in a number of circumstances where the state or tribe has demonstrated that the designated use and criterion are not attainable today (or for a limited period of time), but may be attainable in the longer term. Examples include when:

- Attaining the designated use and criterion is not feasible under the current conditions (e.g., attainment of numeric nutrient criteria would result in substantial and widespread social and economic impact) but could be feasible should circumstances change (e.g., development of less expensive pollution control technology or a change in local economic conditions); or
- The state or tribe does not know whether the designated use and criterion can be attained, but feasible progress toward attaining the designated use and criterion can still be made by implementing known controls and tracking environmental improvements (e.g., complex use attainability challenges involving legacy pollutants).

There are a variety of tools available to states, tribes and dischargers that can provide time to meet regulatory requirements; however, the most common regulatory tools considered are variances and permit compliance schedules. Which tool is appropriate depends upon the circumstances. Variances can be appropriate to address situations where it is known that the designated use and criterion are unattainable today (or for a limited period of time) but feasible progress could be made toward attaining the designated use and criterion. A permit compliance schedule, on the other hand, may be appropriate when the use is attainable, but the permittee needs additional time to modify or upgrade treatment facilities in order to meet its WQBEL such that a schedule and resulting milestones will lead to compliance ''as soon as possible'' with the WQBEL based on the currently applicable WQS. (See CWA section 507(17) for a definition of ''Schedules of compliance'' and 40 CFR 122.47).

The EPA is proposing and soliciting comment on revisions to the WQS regulation that will provide more specificity and clearer requirements on the development and use of variances. Such revisions will establish requirements to help improve water quality by allowing states and tribes time to work with stakeholders to address any challenges and uncertainties associated with attaining the designated use and the associated criterion. These revisions will also provide assurance that further feasible progress toward the designated use and criterion will be made during the variance period.

The EPA's proposed regulatory provisions for variances at § 131.14 address the following key topic areas: (1) Applicability, (2) submission requirements, (3) implementing variances, (4) how to renew a variance, and (5) conforming changes to §§ 131.34 and 131.40. A discussion of this proposal and the rationale for each proposed regulatory provision follows.

2. Rationale and the EPA Proposal

a. Part 1—Applicability of Variances

i. The Scope of a Variance

To provide clarity, promote consistency, and avoid conflicting interpretations of WQS variances, the EPA is proposing a new regulatory definition for WQS variance at § 131.14. A water quality standards variance (WQS variance) is a time-limited use and criterion for a specified pollutant(s), permittee(s), and/or water body or waterbody segment(s) that reflect the highest attainable condition during the specified time period. Variances are WQS subject to EPA review and approval or disapproval and must be consistent with § 131.14. As WQS, variances are subject to § 131.20(a) and thus must be reviewed on a triennial basis. States and tribes continue to have broad discretion on the structure of their triennial reviews and can decide whether and how to modify or adopt WQS as a result of a triennial review. The EPA is also proposing to specify at § 131.14(a)(1) that all other applicable water quality standards not specifically addressed by the variance remain applicable.

Typically, states find variances that apply to a specific pollutant(s) and discharger(s) to be most useful. If a state believes that the designated use and criterion is unattainable for a period of time because the discharger cannot meet its WQBEL, the state may grant a discharger-specific variance so long as the variance is consistent with the CWA and implementing regulation.

Similarly, if a state or tribe believes that the designated use and criterion is unattainable as it applies to multiple permittees because they are all experiencing challenges in meeting their WQBELs for the same pollutant for the same reason, regardless of whether or not they are located on the same water body, a state or tribe may streamline its variance process by granting one variance that applies to all these dischargers (i.e., a multiple discharger variance) so long as the variance is consistent with the CWA and implementing regulations. The EPA recognized the utility of a multiple discharger variance and its distinction from an individual discharger variance in the ''Water Quality Guidance for the Great Lakes System: Supplementary Information Document'' (SID; EPA–820–B–95–001; March 1995). The EPA provided further clarification regarding multiple discharger variances in the ''Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule'' (75 FR 75790, December 6, 2010). More recently in March 2013, the EPA provided a set of frequently asked questions to assist states and tribes in developing credible rationales for multiple discharger variances. [24]

Where a state or tribe can demonstrate that the designated use and criterion currently in place for a specific pollutant is not attainable immediately (or for a limited period of time) for an entire water body, the state or tribe may adopt a waterbody variance as an alternative to a designated use change for the water body so long as the variance is consistent with the CWA and implementing regulation. In such an instance, the variance applies to the water body itself, rather than to any specific source or sources. A waterbody variance provides time for the state or tribe to work with both point and nonpoint sources to determine and implement adaptive management approaches on a waterbody/watershed scale to achieve pollutant reductions and strive toward attaining the water body's designated use and associated criteria.

States and tribes retain discretion as to whether, when, and where to adopt variances. However, consistent with the

[24] *Discharger-specific Variances on a Broader Scale: Developing Credible Rationales for Variances that Apply to Multiple Dischargers,* EPA–820–F–13–012, March 2013 (*http://water.epa.gov/scitech/swguidance/standards/upload/Discharger-specific-Variances-on-a-Broader-Scale-Developing-Credible-Rationales-for-Variances-that-Apply-to-Multiple-Dischargers-Frequently-Asked-Questions.pdf*).

EPA's current position, should a state or tribe choose to grant a variance, it is subject to the EPA's review and approval or disapproval—regardless of the scope of the variance.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section. The EPA also invites comment on the applicability of variances to individual dischargers, multiple dischargers and to entire water bodies.

ii. An EPA Approved Variance Is Only Applicable for CWA Section 402 Permitting Purposes and in Issuing Certifications Under Section 401 of the Act

The proposed WQS regulation at 40 CFR 131.14(a)(2) would specify that where a state or authorized tribe adopts a variance, the state or tribal regulations must continue to reflect the underlying designated use and criterion unless the state or tribe adopts and the EPA approves a revision to the designated use and criterion as consistent with § 131.10 or § 131.11. The interim requirements specified in the variance apply only for CWA section 402 permitting purposes and in issuing certifications under section 401 of the Act for the pollutant(s), permittee(s) and/or water body or waterbody segment(s) covered by the variance.

To date, the EPA's available guidance has characterized variances as temporary changes to the designated use; however, such a characterization might imply that the variance replaces the designated use while the variance is in effect. This has led to conflicting interpretations of how variances affect the implementation of WQS through CWA programs, such as NPDES permits and the CWA 303(d) requirements.

The CWA and implementing regulation direct the states to add waters that are not attaining *any* applicable WQS to their 303(d) impaired waters list. Specifically, CWA section 303(d)(1)(A) states that ''each state shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) of this title are not stringent enough to implement *any* water quality standards applicable to such waters''(emphasis added). Stakeholders have expressed concern that if the interim requirements do not replace the designated use and criterion, there will effectively be two WQS applicable for purposes of implementing the CWA section 303(d) program where a variance has been approved. However, the interim requirements *do not replace* the designated use and criteria for the water body as a whole. Discharger-specific variances affect the development of WQBELs for the discharger(s) specified in the variance; they do not affect the designated use and criterion that apply to the rest of the water body. In addition, variances are time-limited and intended as a tool to facilitate water quality improvements, not to revise the long term goals for a water body. Therefore, any implementation of CWA section 303(d) must continue to be based on the underlying designated uses and criteria for the water body rather than the interim requirements.

By requiring state and tribal regulations to maintain the underlying designated use and criterion where a variance is approved, the proposed regulation will ensure it is clear that the interim requirements associated with a variance do not replace the designated use and criterion. This will, in turn, facilitate a consistent interpretation regarding how variances affect the implementation of WQS through the various CWA programs and how variances are to be used to support feasible progress toward attaining the underlying designated use and criteria.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

iii. Relationship to Technology-Based Requirements in CWA Sections 301(b) and 306

The EPA is proposing to add paragraph (a)(3) to 40 CFR 131.14 to specify that a variance shall not be granted if the designated use and criterion can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act.

As with designated use changes, variances are not permissible if the WQS can be attained by implementing technology-based effluent limits required under section 301(b) and 306 of the Act. Section 301(b)(1)(A), (B), and section 306 of the Act provide for technology-based requirements through effluent limitations guidelines and new source performance standards. These technology-based requirements represent the minimum level of control that must be imposed in a permit (40 CFR 125.3). Because variances are allowed only where the designated use and criterion are demonstrated to be unattainable during the term of the variance, it would not be appropriate to use a variance if the designated use and criterion can be attained by implementing the technology-based requirements of the Act.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

b. Part 2—Submission Requirements

This section describes the relevant information that a state or authorized tribe must submit to the EPA when requesting the EPA's review and approval of a variance.

i. Components of a Variance

1. Identifying Information—Pollutant(s), Permittee(s), Location

The EPA is proposing to add paragraph (b)(1)(i) at 40 CFR 131.14 requiring states and authorized tribes to identify, in the variance, the pollutant(s), the permittee(s), and/or the water body or waterbody segment(s) to which the variance applies.

This proposed regulatory revision will require all variances to specify for what, to whom, and/or where the variance applies, which will help ensure full transparency and public participation on the applicability and scope of the variance. This will alleviate any inconsistencies in the way states and tribes have articulated where, when and how the variance applies.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

2. Numeric Interim Requirements That Apply During a Variance

The EPA is proposing to add paragraph (b)(1)(ii) at 40 CFR 131.14 to require that a variance must specify (1) the highest attainable interim use and numeric criterion that will apply during the term of the variance or (2) an interim numeric effluent condition that reflects the highest attainable condition for a specific permittee(s) during the term of the variance. Neither (1) nor (2) shall result in any lowering of the currently attained water quality, unless a time-limited lowering of water quality is necessary during the term of a variance for restoration activities, consistent with § 131.14(b)(2)(ii).

As variances have been implemented to date, some states and tribes have not identified in the variance the interim requirements that shall apply for permitting purposes during the term of the variance. Specifying the interim requirements to be met during the variance will provide the legal basis for permit writers to develop permit limits that derive from and comply with a WQS, as required by the permitting regulations at 40 CFR 122.44(d)(vii)(A).

As discussed in Section III.C, the EPA is proposing a requirement that a state

or tribe adopts the highest attainable use closest to the 101(a)(2) goals when it has demonstrated that the use specified in CWA section 101(a)(2) or a subcategory of such a use is not attainable based on a UAA. The EPA is proposing that a similar requirement apply to variances such that if states or tribes can demonstrate that a use specified in section 101(a)(2) or subcategory of such a use is not attainable for the variance period, then the state or tribe must adopt a variance reflecting the highest attainable condition during the term of the variance. Such a requirement ensures that feasible progress will be made towards the designated use and the criterion to protect that use during the period of the variance.

Requiring that states and tribes establish interim requirements that apply for purposes of CWA section 402 permitting and in issuing certifications under section 401 of the Act, and that such requirements reflect the highest attainable condition during the variance, creates a framework for variances to provide states and tribes with time to implement adaptive management approaches that drive progress towards meeting the designated use and criterion in a transparent and accountable manner—a key environmental benefit of a variance. This is consistent with previous EPA statements in the EPA's WQS Handbook and 1998 ANPRM that discuss the EPA's position regarding the progress to be made during the term of the variance towards attaining the designated use and criterion.[25]

A state's or tribe's determination or identification of the highest attainable interim use need not be complex. A state or tribe could simply include the phrase ''variance affected'' or ''variance modified'' to the current use description or the state or tribe could describe the interim use by identifying the parameter included in the variance, such as ''pH-limited'' use as a way to provide transparency. States and tribes may find it appropriate to adopt such ''variance modified'' uses as the highest attainable interim use, rather than adopting an alternate use from the state or tribe's current use classification system, as they might be more likely to do if they were making a permanent change to a designated use. To determine the numeric criterion that protects the highest attainable interim use, a state or tribe shall determine the condition that is both feasible to attain and closest to the protection afforded by the designated use and criteria. A state's or tribe's determination of the highest attainable condition and numeric interim requirements to apply during a waterbody variance should include consideration and evaluation of pollutant reductions from all contributing sources. This could include an evaluation of the point source controls, pollutant minimization plans and NPS pollutant reductions that could be achieved in the water body.

Rather than identifying the highest attainable interim use and interim numeric criterion, a state or tribe may choose to specify in its variance that the applicable interim water quality standard shall be defined by a numeric effluent condition that reflects the highest attainable condition for a specific permittee(s) during the term of the variance. Adopting a numeric effluent condition that reflects the highest attainable condition is reasonable because the resulting instream concentration reflects the highest attainable interim use and interim criterion and, therefore, the interim numeric effluent condition is acting as a surrogate for the interim use and interim criterion. If current effluent quality represents the highest attainable condition for a specific permittee(s), then this would become the interim requirement during the term of the variance. In situations where a variance addresses a pollutant(s) for which no feasible wastewater treatment option can be identified, an interim numeric water quality-based effluent condition reflecting the levels currently achievable and a requirement to develop and implement a Pollutant Minimization Program (PMP)[26] together would constitute the highest attainable effluent condition.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

3. Expiration Date

The EPA is proposing to add paragraph (b)(1)(iii) at 40 CFR 131.14 to require that all variances must include an expiration date and that variances must be as short as possible but expire no later than 10 years after the date the state or tribe adopts the variance, consistent with § 131.14(b)(2).

Variances are time-limited; therefore, in order to promote consistency and clarity and to ensure that variances are truly time-limited, the EPA is proposing that all variances include an explicit expiration date. Such expiration date must be consistent with the demonstration that a variance is needed for a specified period of time based on one of the factors identified in proposed § 131.14(b)(2), must be as short as possible, and cannot exceed 10 years. Establishing an expiration date will ensure that the conditions of a variance will be thoroughly re-evaluated and subject to a public review on a regular and predictable basis to determine (1) whether conditions have changed such that the designated use and criterion are now attainable; (2) whether new or additional information has become available to indicate that the designated use and criterion are not attainable in the future (i.e., data or information supports a use change/refinement); or (3) whether feasible progress is being made toward the designated use and criterion and that additional time is needed to make further progress (i.e., whether a variance may be renewed).

The EPA believes that up to 10 years is a reasonable duration for a variance, as it represents two 5-year NPDES permit terms and provides adequate opportunity to implement measures to make feasible progress. A maximum of 10 years is also sufficient to reflect changing circumstances, such as the availability of new economic information or affordable treatment technology that may impact whether or not a variance is still warranted.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

ii. Demonstrating the Need for a Variance—Supporting Documentation

The EPA is proposing to add paragraph (b)(2) at 40 CFR 131.14 to specify that in order to document that a variance is needed for uses specified in section 101(a)(2) or sub-categories of such uses, the state or tribe must demonstrate that attaining the designated use and criterion is not feasible during the term of the variance because of one of the factors listed in § 131.10(g) or because actions necessary to facilitate restoration through dam removal or other significant wetland or stream reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

[25] The EPA's 1994 WQS Handbook stated that ''EPA has approved state adopted variances in the past and will continue to do so if …reasonable progress is being made toward meeting the standards.'' The EPA's 1998 ANPRM indicated that the EPA was considering revising its regulations to include a requirement that before a variance may be granted the applicant must include documentation that ''…reasonable progress will be made toward meeting the underlying or original standard.'' The EPA did not propose a revised regulation at that time.

[26] A PMP is a structured process to reduce loadings of a pollutant by identifying, preventing and reducing loadings, improving processes and improving wastewater treatment.

The regulation at 40 CFR 131.10(g) identifies six factors that may be used to demonstrate, through a UAA, when a use specified in section 101(a)(2) of the Act, or a subcategory of such a use, is unattainable. The EPA's current position (and its longstanding practice) is that one of these same § 131.10(g) ''attainability'' factors must be used by states and tribes to justify why and for how long a variance is necessary for uses specified in section 101(a)(2) or sub-categories of such uses. In developing this proposed regulation, the EPA considered other situations where a variance may be appropriate and the EPA concluded that the current § 131.10(g) factors do not accommodate situations where a variance may be necessary to facilitate short-term efforts to restore the natural physical features (i.e., natural geomorphology) of a system. Specifically, this is meant to address the situation when a time-limited exceedance of a criterion might be expected while efforts for dam removal or significant wetlands or stream reconfiguration/restoration efforts are underway to facilitate restoration of the natural physical features of a water body. The proposed new factor is intended only to cover the length of time necessary to remove the dam or the length of time in which stream restoration activities are actively on-going. Although such a variance might not directly impact a NPDES permittee, it may be necessary to allow states and tribes to certify that any federal license or permit that may result in the discharge of pollutants in state/tribal jurisdiction will still meet their state/tribal WQS, under CWA section 401.

In determining whether or not to grant a variance for uses specified in section 101(a)(2) and sub-categories of such uses (and subsequently submit such a variance to the EPA for review and approval), the state or tribe must consider and evaluate whether the available information supports a conclusion that the designated use and criteria are not feasible to attain during the variance period based on one of the factors listed in § 131.14(b)(2).

A factor that has been commonly used to demonstrate the need for a discharger specific variance is § 131.10(g)(6), which provides that a state or tribe may remove a designated use if ''[c]ontrols more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.'' The Interim Economic Guidance for Water Quality Standards, published March 1995 (see *http://water.epa.gov/scitech/swguidance/standards/economics/*) provides guidance on the types of information that a state or tribe should consider evaluating and include in its record to support a variance based on § 131.10(g)(6).[27]

The state's or tribe's record for granting a variance based on ''Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place'' [28] may include, but not be limited to, consideration and evaluation of the following types of available information:

- Monitoring data to determine the current ambient conditions.
- Data/maps showing the geographical extent of the problem.
- Engineering studies and literature of the relevant remediation alternatives and best management practices that could be implemented and documentation that none of the alternatives or practices, if implemented, would result in attaining the designated use and criteria within the variance timeframe.
- Description, with supporting information from the scientific literature, of the environmental impacts associated with the remedial alternatives and an analysis of what could be done in an environmentally safe manner. Such an analysis would facilitate a determination of whether the human caused condition or source of pollution would cause more environmental harm to remedy than to leave in place.
- Modeling data showing the associated pollutant reductions achievable within the timeframe of the variance compared to reductions needed to achieve the designated use and criteria.

A variance should be a transparent mechanism that allows a state, tribe or discharger a defined period of time to conduct any necessary studies so long as the state or tribe demonstrates the need for the variance in accordance with the regulations and the state or tribe retains the applicable criteria for all other pollutants. The EPA commonly receives questions about whether permit compliance schedules can be used for this purpose. Permit compliance schedules may only be used in situations where time is needed for a permittee to come into compliance with the WQBEL in the permit, not to provide time to address uncertainty regarding the appropriateness or attainability of the WQS.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

iii. Identifying and Documenting the Controls for Other Sources Related to the Pollutant(s) and Location(s) Specified in a Waterbody Variance That Could Be Implemented

The EPA is proposing to add paragraph (b)(3) at § 131.14 to specify that, in addition to the other requirements under 131.14(b), for a waterbody variance (one not limited to a specific discharger or dischargers), a state or tribe must include an *identification and documentation* of any cost-effective and reasonable BMPs for nonpoint sources related to the pollutant(s) and location(s) specified in the variance that could be implemented water body wide to make progress towards attaining the designated use and criterion. A state or tribe must provide public notice and comment for any such documentation.

Because other sources of pollution (e.g., nonpoint sources) can have a significant bearing on whether the designated use and associated criterion for the entire water body are attainable, it is essential for states and tribes to consider and provide information to the public regarding the impact that controlling other sources through application of cost-effective and reasonable BMPs could have on water quality before granting a waterbody variance. Doing so could inform the state's or tribe's assessment of what interim actions may be needed to make feasible progress towards attaining the designated use and criterion related to the pollutant(s) and location(s) specified in the variance, as well as what the highest attainable interim designated use and criterion may be and for how long they may be needed.

A similar requirement is set out in the WQS regulation at § 131.10(d) and (h)(2) which specifies that a use is deemed attainable and cannot be removed if it can be achieved by the imposition of/implementing effluent limits required under sections 301(b) and 306 of the Act as well as cost-effective and reasonable best management practices for nonpoint source control. The EPA's current position is that before removing a designated use states and tribes must first evaluate the impact that point and nonpoint source controls might have on water quality. When conducting such an evaluation, states and tribes should consider the impacts from

[27] The § 131.10(g)(6) analysis would include costs of point source controls and the impacts on the surrounding community.

[28] As specified in § 131.10(g)(3) and cross-referenced in § 131.14(b)(2)(i).

implementing any [29] cost-effective and reasonable BMPs for nonpoint source controls water body wide. In situations where it can be demonstrated that a use is precluded by non-anthropogenic stressors (e.g., high levels of a naturally occurring metal in a surface water body), the EPA does not expect states and tribes to evaluate nonpoint source controls, as controlling nonpoint sources would not lead to attainment.

The EPA's proposed requirement for waterbody variances differs from those applicable to designated uses because variances are time-limited and targeted serving as a tool to facilitate progress toward the designated use and criterion. It is unnecessary to require states and tribes to demonstrate that the designated use and criteria are unattainable even if cost effective and reasonable BMPs were implemented, as is required when revising a designated use, because variances do not ''permanently'' downgrade the designated use but establish a regulatory mechanism by which feasible progress will be made during the term of the variance. Instead, a requirement to identify and document cost-effective and reasonable BMPs for other sources will assist states and tribes in identifying the actions they may need to implement to meet their interim requirements as well as to make feasible progress towards attaining the designated use and criterion.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

c. Part 3—Implementing Variances

The EPA is proposing to add paragraph (c) at 40 CFR 131.14 specifying that variances serve as the basis of a WQBEL included in a NPDES permit for the period the variance is in effect. Any activities required to implement the variance shall be included as conditions of the NPDES permit for the permittee(s) subject to the variance.

When variances are adopted and approved, they serve as the basis of a WQBEL included in a NPDES permit during the variance period. However, any specific actions that will be necessary for the discharger to implement the variance and make such feasible progress are typically at the discretion of the permitting authority. Therefore, in § 131.14(c), the EPA is proposing regulatory language similar to § 131.34(c) and § 131.40(c) linking the requirements of variances to the NPDES permitting process, specifically 40 CFR 122.44(d)(1)(viii)(A) that requires the permitting authority to establish limitations that derive from and comply with the applicable WQS. The EPA believes the proposed regulatory requirement will ensure proper accountability when implementing variances. The proposed provision reflects the provisions in the ''Water Quality Guidance for the Great Lakes System'' (40 CFR part 132, Appendix F, Procedure 2).

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

d. Part 4—How To Renew a Variance

The EPA is proposing to add paragraph (d) at 40 CFR 131.14 to specify that to obtain the EPA's approval of a variance renewal, the state or tribe must meet the requirements of § 131.14 and provide appropriate documentation of the steps taken to meet the requirements of the previous variance. Renewal of the variance may be disapproved if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section. For renewal of a waterbody variance, the state or tribe must also include documentation of whether and to what extent cost-effective and reasonable BMPs have been implemented to address the pollutant(s) subject to the variance and the water quality progress achieved during the variance period.

Although the EPA is proposing to establish a maximum single variance term of no more than 10 years, it recognizes that there may be circumstances in which a renewal of a variance is both necessary and appropriate. As the EPA's 1998 ANPRM articulates, variances are WQS and should be continued or extended only where the initial conditions for granting the variance still apply.[30] If a variance term will expire and the applicant complied with the conditions of the original variance (e.g., feasible progress has been made), but the designated use and criterion remain unattainable, then renewal of a variance may be an appropriate option for the state or tribe to consider.

The EPA is providing an additional requirement for waterbody variances because both point and nonpoint sources are contributing to the water quality challenges. The state or tribe must document whether and to what extent BMPs have been implemented and the water quality progress achieved during the variance period.

This proposed regulation explicitly provides that the EPA may disapprove a renewal of the variance if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of § 131.14. The EPA recognizes that circumstances out of the permittee, state's or tribe's control may impact the ability to meet the specific conditions and requirements of the variance, even if all required actions to implement the variance were completed. The proposed regulatory language allows the EPA to consider these factors when determining whether to grant a WQS variance renewal. If the EPA disapproves the variance renewal, then the state or tribe must implement its water quality program to meet the applicable designated use and associated criteria or conduct a UAA to justify a revision to the designated use and associated criteria.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

e. Part 5—Variances for the EPA-Promulgated Designated Uses

The EPA is proposing to delete detailed variance procedures promulgated by the EPA in 40 CFR 131.34(c) and 131.40(c) and replace them with language specifying that the appropriate Regional Administrators may grant variances from the EPA-promulgated regulations for Kansas and Puerto Rico consistent with this proposed requirements at § 131.14.

The EPA promulgated variance procedures that the Regional Administrator could use to grant variances from the specific WQS the EPA promulgated for Kansas and Puerto Rico in § 131.34 and 131.40. This proposal reflects the most efficient and transparent approach to ensure that variances granted by the Regional Administrator for the federally promulgated standards in Kansas and Puerto Rico meet the same requirements as the rest of the United States once the EPA finalizes the nationally applicable revisions to 40 CFR part 131.

The EPA invites comment on its proposal and on any other options it should consider or on the interpretations expressed in this section.

G. Provisions Authorizing the Use of Permit-Based Compliance Schedule

1. The EPA Proposal

The EPA is proposing to add a new regulatory provision at § 131.15 to be consistent with the decision of the EPA Administrator in *In the Matter of Star-*

[29] i.e., not just those that may already be required by state regulations.

[30] 63 FR 36759.

Kist Caribe, Inc. (1990 WL 324290 (EPA), 1990 EPA App. LEXIS 45, 3 EAD 172 (April 16, 1990)). This provision would clarify that a permitting authority may only issue compliance schedules for WQBELs in NPDES permits if the state or tribe has authorized issuance of such compliance schedules pursuant to state or tribal law in its water quality standards or implementing regulations. Any such compliance schedule authorizing provision is a WQS subject to the EPA's review and approval. The proposed provision would also clarify that individual compliance schedules issued pursuant to such authorizing provisions are not themselves WQS but must be consistent with CWA section 502(17), the state's or tribe's EPA-approved compliance schedule authorizing provision, and the requirements of 40 CFR 122.2 and 122.47.

2. Rationale for Revision

CWA section 502(17) defines ''schedule of compliance'' to mean ''a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.'' The EPA's NPDES regulation at 40 CFR 122.2 defines a schedule of compliance as ''a schedule of remedial measures included in a 'permit,' including an enforceable sequence of interim requirements . . . leading to compliance with the CWA and regulations.'' Section 301(b)(1)(C) of the Act specifies that there shall be achieved ''. . . not later than July 1, 1977, any more stringent limitation, including those necessary to meet WQS, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.''

In, *In the Matter of Star-Kist Caribe, Inc.,* the EPA Administrator (in an appeal of an EPA-issued NPDES permit) interpreted CWA 301(b)(1)(C) to mean that (1) after July 1, 1977, permits must require immediate compliance with (i.e., may not contain compliance schedules for) effluent limitations based on WQS adopted before July 1, 1977, and (2) permit compliance schedules are allowed for effluent limitations based on WQS adopted after that date *only* if the state or tribe has clearly indicated in its WQS or implementing regulations that it intends to allow them (i.e., the state's or tribe's WQS or implementing regulations must contain a provision authorizing the use of permit-based compliance schedules). The latter requirement ensures that a permit including such a compliance schedule still meets WQS pursuant to CWA section 301(b)(1)(C).

The EPA's current WQS regulation is silent regarding compliance schedules and compliance schedule authorizing provisions. As a result, despite *Star-Kist,* the EPA is concerned that state/tribal permitting authorities may be including compliance schedules in permits, thus delaying compliance with a WQS-based WQBEL, even though the state/tribe may not have authorized the use of such compliance schedules in its WQS or implementing regulations.

Consistent with the *Star-Kist* decision, a state or tribe has the discretion to include a compliance schedule authorizing provision in its WQS or implementing regulations. Such a provision may also be codified in a state or tribe's NPDES regulations. However, regardless of where it appears, a compliance schedule authorizing provision adopted pursuant to state or tribal law is considered a WQS subject to the EPA's approval under CWA section 303(c)(3). Although a compliance schedule authorizing provision does not describe the desired condition or level of protection of a water body in exactly the same way as a designated use or water quality criteria, it expresses the state's or tribe's intent to allow a delay in meeting the desired condition. Compliance schedule authorizing provisions allow the permitting authority to provide a permittee additional time to comply with a WQBEL that derives from and complies with the applicable WQS beyond the date of permit issuance, which is the date upon which a permittee is otherwise required to comply with its WQBEL. In addition, as articulated in the *Star-Kist* decision, states and tribes may only allow this delay if the applicable WQS is new or revised, after July 1, 1977.

When states and tribes authorize the use of compliance schedules in their WQS or implementing regulations, they ensure that WQBELs subject to appropriately issued compliance schedules are ''fully consistent with, and therefore 'meet,' the requirements of the State or tribal water quality standard, as contemplated by [CWA] 301(b)(1)(C).'' *Star-Kist* at 175. Once approved pursuant to CWA 303(c)(3), the compliance schedule authorizing provision itself becomes part of the applicable WQS; therefore, any delay in compliance with a WQBEL pursuant to that permit compliance schedule would be consistent with state/tribal WQS. A compliance schedule, as defined by section 502(17) of the Act, that is granted pursuant to a state's or tribe's approved compliance schedule authorizing provision is, on the other hand, a permitting tool and is not itself considered a WQS. The EPA has implemented section 502(17) of the Act in the context of the NPDES permitting program at 40 CFR 122.2 and 122.47. Any compliance schedule, itself, must be consistent with these provisions.

The EPA invites comments on the proposed addition of § 131.15. The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

H. Other Changes

1. The EPA Proposal

In the course of developing this proposal, the EPA identified several spelling mistakes, grammatical errors and/or inconsistencies, and incorrect citations in 40 CFR part 131, as well as the need for various conforming edits (e.g., provisions that need to be re-numbered or re-lettered based on a regulatory addition or deletion outlined in this proposal). The EPA is proposing the following changes:

- § 131.2: Change ''. . . necessary to protect the uses'' to ''. . . that protect the designated uses'' (consistency with terminology in § 131.11).
- § 131.3(h): Change ''technology-bases'' to ''technology-based'' (spelling mistake).
- § 131.3(j): Delete ''the Trust Territory of the Pacific Islands.''[31] Insert the word ''the'' in front of ''water quality standards program'' (grammatical clarification).
- § 131.5(a)(1): Change ''. . . has adopted water uses'' to ''. . . has adopted designated water uses'' (grammatical clarification).
- § 131.5(a)(2): Insert ''. . . based on sound scientific rationale'' (consistency with language in § 131.11).
- § 131.10(j): Insert ''and § 131.10(g)'' before the word ''whenever'' (consistency with proposed revisions to § 131.10(g)).
- § 131.10(j)(2): Insert '', to remove a subcategory of such a use,'' after the first instance of ''. . . specified in section 101(a)(2) of the Act'' (legal clarification that a UAA is also required when removing a subcategory of a use specified in section 101(a)(2) of the Act without adopting another use in its place).

[31] ''The Trust Territory of the Pacific Islands'' became the ''Commonwealth of the Northern Mariana Islands'' in 1986 via Presidential Proclamation. See *http://www.presidency.ucsb.edu/ws/index.php?pid=36688#axzz1XrK7AXLN.*

• § 131.11(a)(2): Change reference from ''40 CFR part 35'' to ''40 CFR part 130'' to reflect the correct citation.

• § 131.11(b): Italicize ''Form of criteria'' (consistency with formatting in § 131.11(a)).

• § 131.12(a)(2): Insert ''the protection and'' into the phrase ''propagation of fish, shellfish and wildlife'' to be consistent with CWA 101(a)(2) and the rest of the WQS regulation at part 131. Change ''assure'' to ''ensure'' (grammatical clarification).

• § 131.20(b): Change ''hold a public hearing'' to ''hold public hearings'' and add ''or revising'' after ''reviewing'' (consistency with CWA 303(c) and § 131.20(a)). Insert ''EPA's'' in front of ''public participation regulation'' (clarification that 40 CFR part 25 is the EPA's regulation). Delete the phrase ''EPA's water quality management regulation (40 CFR 130.3(b)(6))'' (nonexistent citation).

The EPA invites comments on the proposed amendments described above. The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

IV. When does this action take effect?

Comments on this proposed rulemaking must be received on or before December 3, 2013. Should this proposed rulemaking be finalized, the effective date will likely be 60 days after date of publication of the final rule in the **Federal Register**. For judicial review purposes, the effective date will likely be 60 days after date of publication of the final rule in the **Federal Register**.

The EPA is proposing to require states and tribes to meet the requirements of the final rule on the effective date of the final rule. The EPA's expectation is that, where a new or revised requirement necessitates a change to state or tribal WQS, such changes will occur within the next triennial review that the state or tribe initiates after the EPA's publication of the final rule.

The EPA invites comments on the proposed effective dates. The EPA also invites comment on any other options it should consider or on the interpretations expressed in this section.

V. Economic Impacts on State and Tribal WQS Programs

The EPA evaluated the potential incremental administrative burdens and costs that may be associated with this proposal. Incremental burden and costs are those above and beyond the burden and costs associated with implementation of current WQS regulations. Because this proposal will not establish any requirements directly applicable to regulated entities, the focus of the EPA's economic analysis is to estimate the potential administrative burden and costs to state, tribal, and territorial governments, and the EPA. The EPA's economic analysis is documented in *Economic Analysis for the Water Quality Standards Regulatory Clarifications (Proposed Rule)* and can be found in the docket for this proposal.

The EPA assessed the potential incremental burden and costs associated with this proposed regulation revisions by first identifying those elements of the proposed revisions that may impose incremental burdens and costs. The EPA estimated the incremental number of labor hours potentially required by states and tribes to comply with those elements of the proposed regulations, and then estimated the costs associated with those additional labor hours. The EPA identified four areas where incremental burdens and costs may be anticipated: (1) One-time burden and costs associated with state and tribal rulemaking activities because states and tribes may need to adopt new or revised provisions into their WQS, (2) annual costs associated with designating uses because identifying the highest attainable use when performing a UAA may require additional labor hours, (3) annual costs associated with antidegradation implementation including reviewing a greater number and more complex antidegradation requests, and (4) annual costs associated with additional development and documentation of variance requests. In addition to the proposed requirements included in this proposal, the EPA is considering and requesting comment on whether the EPA should include a requirement that antidegradation implementation methods be formally adopted as WQS and thus subject to the EPA's review and approval or disapproval. Incremental burden and costs were estimated for all 50 states, the District of Columbia, 5 territories, and the 39 Indian tribes authorized to administer a WQS program with WQS approved by the EPA.

Estimates of the incremental administrative burden and costs to state and tribal governments associated with this proposal without the requirement to adopt antidegradation implementation methods as WQS are summarized in the following table:

SUMMARY OF INCREMENTAL ADMINISTRATIVE BURDEN AND COSTS TO STATE AND TRIBAL GOVERNMENTS ASSOCIATED WITH THIS PROPOSAL WITHOUT THE REQUIREMENT TO ADOPT ANTIDEGRADATION IMPLEMENTATION METHODS AS WQS

Provision	One-time			Recurring	
	Burden (hours)	Cost (2013$ millions)	Annualized cost (2013$ millions/year) [1]	Burden (hours/year)	Cost (2013$ millions/year)
Rulemaking Activities	9,500–47,500	$0.46–$2.28	$0.03–$0.15	—	—
Designated Uses	—	—	—	240–1,200	$0.01–$0.06
Antidegradation [2]	—	—	—	97,070–145,605	$4.61–$7.04
Variances	—	—	—	4,620–5,310	$0.22–$0.26
National Total	9,500–47,500	$0.46–$2.28	$0.03–$0.15	101,930–152,115	$4.84–$7.36

'—' = not applicable.

[1] Although the EPA expects these one-time costs to occur once over a 3 year period, they are annualized here at 3% discount rate over 20 years for comparative purposes.

[2] Includes annual costs associated with reviewing a greater number and more complex antidegradation requests.

Estimates of the incremental administrative burden and costs to the EPA associated with this proposal without the requirement to adopt antidegradation implementation methods as WQS are summarized in the following table:

SUMMARY OF POTENTIAL INCREMENTAL ADMINISTRATIVE BURDEN AND COSTS TO THE EPA ASSOCIATED WITH THIS PROPOSAL WITHOUT THE REQUIREMENT TO ADOPT ANTIDEGRADATION IMPLEMENTATION METHODS AS WQS

One-time					Recurring			
Costs to states and tribes (2013$ million)	Costs to the agency [1] (2013$ million)	Annualized cost to the agency [2] (2013$ million per year)	Burden		Costs to states and tribes (2013$ million per year)	Costs to the agency [1] (2013$ million per year)	Burden	
			Hours [3]	FTEs [4]			Hours per year [3]	FTEs per year [4]
$0.46–$2.28	$0.09–$0.46	$0.01–$0.03	1,200–6,040	0.58–2.9	$4.84–$7.36	$0.97–$1.47	12,810–19,470	6.16–9.36

[1] Assuming that the incremental costs to the EPA are equal to 20% of the costs to states and tribes.
[2] Although the EPA expects these one-time costs to occur once over a 3 year period, they are annualized here at 3% discount rate over 20 years for comparative purposes.
[3] Total costs to the Agency divided by hourly wage rate (including overhead and benefits) of $75.55 per hour.
[4] Burden hours to the Agency divided by hours worked by full-time equivalent (FTE) employees per year (2,080 hours per year).

A summary of the combined estimated costs to all potentially affect states, tribes, and the EPA without the requirement to adopt antidegradation implementation methods as WQS are summarized in the following table:

SUMMARY OF POTENTIAL INCREMENTAL ADMINISTRATIVE BURDENS AND COSTS ASSOCIATED WITH THE PROPOSED RULE TO STATES, TRIBES, AND THE EPA WITHOUT THE REQUIREMENT TO ADOPT ANTIDEGRADATION IMPLEMENTATION METHODS AS WQS

Entities	One-time			Recurring	
	Burden (hours)	Cost (2013$ millions)	Annualized cost [1] (2013$ million/ year)	Burden (hours/year)	Cost (2013 $millions/year)
States and tribes	9,500–47,500	$0.46–$2.28	$0.03–$0.15	101,930–152,115	$4.84–$7.36
Agency	1,200–6,040	$0.09–$0.46	$0.01–$0.03	12,810–19,470	$0.97–$1.47
Total	10,700–53,540	$0.55–$2.74	$0.04–$0.18	114,740–171,585	$5.81–$8.83

[1] Although the EPA expects these one-time costs to occur once over a 3 year period, they are annualized here at 3% discount rate over 20 years for comparative purposes.

To estimate the total annual cost of this proposal without the requirement to adopt antidegradation implementation methods as WQS which include both one-time costs and recurring costs, the EPA annualized the one-time costs over a period of 20 years. Using a 20-year annualization period and a discount rate of three percent, total annual costs for this proposal without the requirement to adopt antidegradation implementation methods as WQS are estimated to range from $5.84 million ($0.04 million + $5.81 million) to $9.01 million ($0.18 million + $8.83 million) per year.

In addition to the proposed requirements included in this proposal, the EPA is considering and requesting comment on whether the EPA should include a requirement that antidegradation implementation methods be formally adopted as WQS and thus subject to the EPA's review and approval or disapproval. This additional requirement would require affected entities to develop or revise antidegradation implementation methods, and adopt the implementation methods in WQS, resulting in one-time (nonrecurring) burden and costs. Estimates of the incremental administrative burden and costs to state and tribal governments associated with this proposal including the requirement to adopt antidegradation implementation methods into WQS are summarized in the following table:

SUMMARY OF INCREMENTAL ADMINISTRATIVE BURDEN AND COSTS TO STATE AND TRIBAL GOVERNMENTS ASSOCIATED WITH THIS PROPOSAL WITH THE REQUIREMENT TO ADOPT ANTIDEGRADATION IMPLEMENTATION METHODS AS WQS

Provision	One-time			Recurring	
	Burden (hours)	Cost (2013$ millions)	Annualized cost [1] (2013$ millions/ year)	Burden (hours/year)	Cost (2013$ millions/year)
Rulemaking Activities	9,500–47,500	$0.46–$2.28	$0.03–$0.15	—	—
Designated Uses	—	—	—	240–1,200	$0.01–$0.06
Antidegradation	33,600–67,200	1.61–3.23	0.11–0.22	97,070–145,605	4.61–7.04
Variances	—	—	—	4,620–5,310	0.22–0.26
National Total	43,100–114,700	2.07–5.51	0.14–0.37	101,930–152,115	4.84–7.36

'—' = not applicable.
[1] Although the EPA expects these one-time costs to occur once over a 3 year period, they are annualized here at 3% discount rate over 20 years for comparative purposes.

Estimates of the incremental administrative burden and costs to the EPA associated with this proposal including the requirement to adopt antidegradation implementation

methods into WQS are summarized in the following table:

SUMMARY OF POTENTIAL INCREMENTAL ADMINISTRATIVE BURDEN AND COSTS TO THE EPA ASSOCIATED WITH THIS PROPOSAL WITH THE REQUIREMENT TO ADOPT ANTIDEGRADATION IMPLEMENTATION METHODS AS WQS

One-time					Recurring			
Costs to states and tribes (2013$ million)	Costs to the agency [1] (2013$ million)	Annualized cost to the agency [2] (2013$ million per year)	Burden		Costs to states and tribes (2013$ million per year)	Costs to the agency [1] (2013$ million per year)	Burden	
			Hours [3]	FTEs [4]			Hours per year [3]	FTEs per year [4]
$2.07–$5.51	$0.41–$1.10	$0.03–$0.07	5,480–14,570	2.63–7.01	$4.84–$7.36	$0.97–$1.47	12,810–19,470	6.16–9.36

[1] Assuming that the incremental costs to the EPA are equal to 20% of the costs to states and tribes.
[2] Although the EPA expects these one-time costs to occur once over a 3 year period, they are annualized here at 3% discount rate over 20 years for comparative purposes.
[3] Total costs to the Agency divided by hourly wage rate (including overhead and benefits) of $75.55 per hour.
[4] Burden hours to the Agency divided by hours worked by full-time equivalent (FTE) employees per year (2,080 hours per year).

A summary of the combined estimated costs of this proposal to all potentially affect states, tribes, and the EPA including the requirement to adopt antidegradation implementation methods into WQS are summarized in the following table.

SUMMARY OF POTENTIAL INCREMENTAL ADMINISTRATIVE BURDENS AND COSTS ASSOCIATED WITH THE PROPOSED RULE TO STATES, TRIBES, AND THE EPA WITH THE REQUIREMENT TO ADOPT ANTIDEGRADATION IMPLEMENTATION METHODS AS WQS

Entities	One-time			Recurring	
	Burden (hours)	Cost (2013$ millions)	Annualized cost [1] (2013$ millions/year)	Burden (hours/year)	Cost (2013 $millions/year)
States and tribes	43,100–114,700	$2.07–$5.51	$0.14–$0.37	101,930–152,115	$4.84–$7.36
Agency	5,480–14,570	$0.41–$1.10	$0.03–$0.07	12,810–19,470	$0.97–$1.47
Total	48,580–129,270	$2.48–$6.61	$0.17–$0.44	114,740–171,585	$5.81–$8.83

[1] Although the EPA expects these one-time costs to occur once over a 3 year period, they are annualized here at 3% discount rate over 20 years for comparative purposes.

To estimate the total annual cost of this proposal including the requirement to adopt antidegradation implementation methods as WQS which include both one-time costs and recurring costs, the EPA annualized the one-time costs over a period of 20 years. Using a 20-year annualization period and a discount rate of three percent, total annual costs for this proposal with the requirement to adopt antidegradation implementation methods as WQS are estimated to range from $5.98 million ($0.17 million + $5.81 million) to $9.27 million ($0.44 million + $8.83 million) per year.

In addition to estimating potential burden and costs, the EPA also evaluated the potential benefits associated with this proposal. States, tribes, stakeholders, and the public will benefit from the proposed clarifications of the WQS regulations by ensuring better utilization of available WQS tools that allow states and tribes the flexibility to implement their WQS in an efficient manner while providing transparency and open public participation. Although associated with potential administrative burden and costs in some areas, this proposal has the potential to partially offset these costs by reducing regulatory uncertainty and consequently increasing overall program efficiency. Furthermore, more efficient and effective implementation of state and tribal WQS has the potential to provide a variety of economic benefits associated with cleaner water including the availability of clean, safe, and affordable drinking water, water of adequate quality for agricultural and industrial use, and water quality that supports the commercial fishing industry and higher property values. Nonmarket benefits of this proposal include the protection and improvement of public health and greater recreational opportunities. The EPA acknowledges that achievement of any benefits associated with cleaner water would involve additional control measures, and thus costs to regulated entities and non-point sources, that have not been included in the economic analyses for this proposed rule. The EPA has not attempted to quantify either the costs of such control measures that might ultimately be required as a result of this rule, or the benefits they would provide. Complete details on how the EPA evaluated burden, costs, and benefits are documented in *Economic Analysis for the Water Quality Standards Regulatory Clarifications (Proposed Rule)* included in the docket for this proposal.

The EPA invites comments on its economic analysis. Specifically, the EPA invites comments on the accuracy of the burden and costs estimates presented in this proposal, and any actual state or tribal data that may help to refine these estimates. This proposal does not establish any requirements directly applicable to regulated point sources or nonpoint sources of pollution, although the EPA recognizes that these sources could potentially incur costs as a result of changes to WQS adopted by states and tribes as a result of this rule (states and tribes could also adopt new or revised WQS independent of this proposed rule). However, unlike some other EPA WQS rules for which an economic analysis was prepared, this proposal does not lend itself to identification of readily predictable outcomes regarding changes to state water quality standards that might result. Likewise, the EPA could

not predict requirements that could ultimately be imposed on NPDES permittees and nonpoint sources. Thus, the EPA has not analyzed potential costs or cost savings associated with any consequences of revised state or tribal WQS. Nonetheless, the EPA is interested in the potential implications of this proposal for regulated entities and non-point sources and on whether and how it should incorporate such costs in its economic analysis of the rule.

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 (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under E.O.s 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.

In addition, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''Economic Analysis for the Proposed Revisions to Water Quality Standards Regulatory Revisions.'' A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in Section V of the preamble.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule 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 the EPA has been assigned EPA ICR number 2449.01.

The EPA is proposing the WQS Regulatory Clarifications Rule to improve the regulation's effectiveness in helping restore and maintain the chemical, physical, and biological integrity of the nation's waters. The core of the current regulation has been in place since 1983; since then, a number of issues have been raised by stakeholders or identified by the EPA in the implementation process that will benefit from clarification and greater specificity. The proposed rule addresses the following key program areas: (1) Administrator's determinations that new or revised WQS are necessary, (2) designated uses, (3) triennial reviews, (4) antidegradation, (5) variances to WQS, and (5) compliance schedule authorizing provisions. In addition to the proposed requirements included in this proposal, the EPA is considering and requesting comment on whether the EPA should require that antidegradation implementation methods be adopted as WQS and thus subject to the EPA's review and approval or disapproval. This mandatory information collection will ensure the EPA has the needed information to review standards and make approvals or disapprovals in accordance with provisions in the proposed Water Quality Standards Regulatory Clarifications Rule. Under the Clean Water Act (CWA), the EPA is responsible for reviewing and approving or disapproving new and revised WQS submitted by states and tribes. The EPA will use the information required by this proposed rule to carry out its responsibility under the CWA. In reviewing state and tribal standards submissions, the EPA considers whether submissions are consistent with the WQS regulation at part 131. The WQS Regulatory Clarifications Rule will add new requirements to part 131. If the information collection activities in the WQS Regulatory Clarifications Rule are not carried out, specific improvements in the implementation of the WQS program will not take place. In some cases, implementation and control steps such as total maximum daily loads and National Pollutant Discharge Elimination System permits may not be as protective as necessary under the CWA.

Burden is defined at 5 CFR 1320.3(b). The EPA expects that the proposed rule will lead to incremental burden hours and labor costs in the following areas: rulemaking activities, designated uses, antidegradation, and variances to WQS. The EPA estimates the cost of labor from data on state government hourly wage rates (data are not available for tribes). The labor categories chosen as applicable to WQS regulatory revision efforts are Environmental Scientist, Department Manager, Environmental Engineer, and Economist. Given the 2012 labor rates for these categories, inflated to March 2013 dollars using the Bureau of Labor Statistics (BLS) Employment Cost Index for professional and related state and local government workers (116.0/115.0 = 1.01), and accounting for benefits using the BLS Employer Cost for Employee Compensation for state and local professional government workers (32.7% of total compensation is attributable to benefits), the EPA calculated an average hourly wage rate of $48.

The EPA estimates the incremental number of labor hours using historical information and data, and the historical knowledge and best professional judgment of EPA personnel with experience administering the WQS program. A total of 95 governmental entities are potentially affected by the proposed rule: 50 states, the District of Columbia, 6 territories, and 39 tribes that have authority to administer WQS programs. Rulemaking activities result in one-time (nonrecurring) burden and costs. Note that these one-time activities will occur over an initial three-year period. The proposed rule will also require affected entities to undertake the following activities each year: conduct use attainability analyses to determine the highest attainable use, review alternative analyses in antidegradation requests, review additional antidegradation requests for high quality waters, comply with new submission requirements for variances, and review additional variance renewal applications. Given the EPA's estimates of the number and frequency of labor hours associated with each of the proposed provisions, the total one-time incremental burden (during each of the first three years) associated with the proposed rule without requiring adoption of antidegradation implementation methods as WQS ranges from 9,500 hours to 47,500 hours, while the annual incremental burden ranges from 101,930 hours to 152,115 hours. Given an hourly wage rate of $48, these labor hours lead to total one-time costs (incurred during each of the first three years) of approximately $0.46 million to $2.28 million and annual costs of $4.84 million to $7.36 million. These incremental burden and costs are associated with a total of 32 one-time responses per year during the initial three-year period for rulemaking activities. In addition, the number of annual responses is 1,405 responses.

In addition to the proposed requirements included in this proposal, the EPA is considering and requesting comment on whether the EPA should include a requirement that antidegradation implementation methods be formally adopted as WQS and thus subject to the EPA's review and approval or disapproval. This additional requirement would require affected entities to develop or revise antidegradation implementation methods, and adopt antidegradation implementation methods as WQS resulting in one-time (nonrecurring) burden and costs. Including this

additional requirement, the total one-time incremental burden (during each of the first three years) associated with the proposed rule ranges from 43,100 hours to 114,700 hours, while the annual incremental burden remains the same ranging from 101,930 hours to 152,115 hours. Given an hourly wage rate of $48, these labor hours lead to total one-time costs (incurred during each of the first three years) of approximately $2.07 to $5.51 million and annual costs of $4.84 to $7.36 million. These incremental burden and costs are associated with a total of 32 one-time responses per year during the initial three-year period for rulemaking activities. In addition, the number of annual responses is 1,405 responses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OW–2010–0606. Submit any comments related to the ICR to the EPA and OMB. See 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 September 4, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by October 4, 2013. The final rule 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 proposed 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 rule will not impose any requirements on small entities.

State and tribal governments responsible for administering or overseeing water quality programs may be directly affected by this rulemaking, as states and tribes may need to consider and implement new provisions, or revise existing provisions, in their WQS. Small entities, such as small businesses or small governmental jurisdictions, are not directly regulated by this rule. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes 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 for the private sector in any one year. The EPA estimates total annual costs to states and tribes to range from $4,840,000 to $7,360,000. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Under section 6(b) of E.O. 13132, the EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the EPA consults with state and local officials early in the process of developing the proposed action. In addition, under section 6(c) of E.O. 13132, the EPA may not issue an action that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed action.

The EPA has concluded that the action does not have federalism implications. The EPA is proposing changes to provide clarity and transparency in the WQS regulation that may require state and local officials to reevaluate or revise their standards. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the E.O. do not apply to this action.

Consistent with the EPA's policy, the EPA nonetheless consulted with state and local officials early in the process of developing the proposed action to allow them to provide meaningful and timely input into its development. In August and September 2010, the EPA consulted with representatives from states and intergovernmental associations to hear their views on the proposed regulatory changes. Participants expressed concern that the proposed changes may impose a resource burden on state and local governments, as well as infringe on states' flexibility in the areas of antidegradation and designated uses. The EPA's view is that such changes would generally codify the EPA's current practice and provide clear expectations to state and local regulators. Participants urged the EPA to ensure that states with satisfactory regulations in these areas are not unduly burdened by the proposed changes.

Keeping with the spirit of E.O. 13132, and consistent with the EPA's policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials. In particular, the EPA requests comment on any provision in this proposed rule that state officials believe would impose an undue burden on state water quality standards programs.

F. Executive Order 13175

Subject to the E.O. 13175 (65 FR 67249, November 9, 2000), the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. To date, 48 Indian tribes have been approved for treatment in a manner similar to a state (TAS) for CWA sections 303 and 401. Of the 48 tribes, 39 have federally approved WQS in their respective jurisdictions. All of these authorized tribes are subject to this proposed rule. However, this rule might impact other tribes as well because federal, state or authorized tribal standards may apply to waters adjacent to the tribal waters. The EPA consulted with tribal officials early in the process of developing this regulation to allow them to provide meaningful and timely input into its development. In August 2010, the EPA held a tribes-only consultation session to hear their views and answer questions of all interested tribes on the targeted areas the EPA is considering for regulatory revision. Tribes expressed the need for additional guidance and assistance in implementing the proposed rulemaking, specifically for development of antidegradation implementation methods and determination of the highest attainable use. The EPA has considered the burden to states and tribes in developing this proposal and, when possible, has chosen to provide sufficient direction and flexibility to allow tribes to spend resources addressing other aspects of their WQS programs. The EPA also intends to release updated guidance in a new edition of the WQS Handbook. The 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

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in E.O. 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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the 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, 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

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

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not adversely affect the level of protection provided to human health or the environment. This proposed rulemaking does not directly establish water quality standards for a state or tribe. In addition, this proposed rulemaking is national in scope, and therefore is not specific to a particular geographic area(s).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 20, 2013.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart A—General Provisions

■ 2. Amend § 131.2 by revising the first sentence to read as follows:

§ 131.2 Purpose.

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses. * * *

■ 3. Amend § 131.3 by revising paragraphs (h) and (j), and adding paragraph (m) to read as follows:

§ 131.3 Definitions.

* * * * *

(h) *Water quality limited segment* means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

* * * * *

(j) *States* include: The 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Indian Tribes that EPA determines to be eligible for purposes of the water quality standards program.

* * * * *

(m) *Highest attainable use* is the aquatic life, wildlife, and/or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, as determined using best available data and information through a use attainability analysis defined in § 131.3(g).

■ 4. Amend § 131.5 by:

■ a. Revising paragraphs (a)(1) and (a)(2);

■ b. Redesignating paragraphs (a)(3) through (a)(5) as (a)(4) through (a)(6) and adding a new paragraph (a)(3); and

■ c. Revising paragraph (b).

The revisions and additions read as follows:

§ 131.5 EPA Authority.

(a) * * *

(1) Whether the State has adopted designated water uses which are consistent with the requirements of the Clean Water Act;

(2) Whether the State has adopted criteria that protect the designated water uses based on sound scientific rationale;

(3) Whether the State has adopted an antidegradation policy consistent with § 131.12(a), and if the State has chosen to adopt implementation methods, whether those implementation methods are consistent with § 131.12;

* * * * *

(b) If EPA determines that the State's or Tribe's water quality standards are consistent with the factors listed in paragraphs (a)(1) through (a)(6) of this section, EPA approves the standards. EPA must disapprove the State's or Tribe's water quality standards and promulgate Federal standards under section 303(c)(4), and for Great Lakes States or Great Lakes Tribes under section 118(c)(2)(C) of the Act, if State or Tribal adopted standards are not consistent with the factors listed in paragraphs (a)(1) through (a)(6) of this section. EPA may also promulgate a new or revised standard when necessary to meet the requirements of the Act.

* * * * *

Subpart B—Establishment of Water Quality Standards

■ 5. Amend § 131.10 by revising paragraph (g) introductory text and paragraphs (j), and (k) to read as follows:

§ 131.10 Designation of uses.

* * * * *

(g) Pursuant to § 131.10(j), States may designate or remove a use or a sub-category of a use as long as the action does *not* remove protection for an existing use, and the State can demonstrate that attaining the use is not feasible because of one of the six factors in this paragraph. If a State adopts new or revised water quality standards based on a use attainability analysis, the State shall also adopt the highest attainable use and the criteria to protect that use. To meet this requirement, States may, at their discretion, utilize their current use categories or subcategories, develop new use categories or subcategories, or adopt another use which may include a location-specific use.

* * * * *

(j) A State must conduct a use attainability analysis as described in § 131.3(g), and § 131.10(g), whenever:

(1) The State designates or has designated uses for a water body for the first time that do not include the uses specified in section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act, to remove a sub-category of such a use, or to designate a sub-category of such a use which requires criteria less stringent than previously applicable.

(k) A State is not required to conduct a use attainability analysis whenever:

(1) The State designates or has designated uses for a water body for the first time that include the uses specified in section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is not specified in section 101(a)(2) of the Act, or designate a sub-category of a use specified in section 101(a)(2) of the Act which requires criteria at least as stringent as previously applicable.

■ 6. Amend § 131.11 by revising paragraphs (a)(2) and (b) introductory text to read as follows:

§ 131.11 Criteria.

(a) * * *

(2)*Toxic Pollutants.* States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR part 130).

(b) *Form of criteria:* In establishing criteria, States should:

* * * * *

■ 7. Amend § 131.12 by revising the section heading and paragraphs (a) introductory text and (a)(2), and adding paragraph (b) to read as follows:

§ 131.12 Antidegradation Policy and Implementation Methods.

(a) The State shall develop and adopt a statewide antidegradation policy. The antidegradation policy shall, at a minimum, be consistent with the following:

* * * * *

(2) Where the quality of the waters exceed levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall ensure water quality adequate to protect existing uses fully. Further, the state shall ensure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

* * * * *

(b) The State shall develop and make available to the public statewide methods for implementing the antidegradation policy adopted pursuant to paragraph (a) of this section. A State's antidegradation implementation methods shall be designed to achieve antidegradation protection consistent with paragraph (a) of this section. Such methods must ensure that:

(1) High quality waters are identified on a parameter-by-parameter basis or on a water body-by-water body basis at the State's discretion, but must not exclude any water body from high quality water protection solely because not all of the uses specified in CWA section 101(a)(2) are attained; and

(2) The State will only make a finding that lowering high water quality is necessary, pursuant to paragraph (a)(2) of this section, after conducting an alternatives analysis that evaluates a range of non-degrading and minimally degrading practicable alternatives that have the potential to prevent or minimize the degradation associated with the proposed activity. If the State can identify any-practicable alternatives, the State must choose one of those alternatives to implement when authorizing a lowering of high water quality.

■ 8. Add § 131.14 to subpart B to read as follows:

§ 131.14 Water quality standards variances.

States may, at their discretion, grant variances subject to the provisions of this section and public participation requirements at § 131.20(b). A water quality standards variance (WQS

variance) is a time-limited designated use and criterion for a specified pollutant(s), permittee(s), and/or water body or waterbody segment(s) that reflect the highest attainable condition during the specified time period. WQS variances are water quality standards subject to EPA review and approval or disapproval and must be consistent with this section. Any such WQS variances adopted after *[effective date of the final rule]* must be consistent with this regulatory section.

(a) *Applicability:*

(1) All applicable WQS not specifically addressed by the WQS variance remain applicable.

(2)(i) Where a state adopts a WQS variance, the State regulations must continue to reflect the underlying designated use and criterion unless the State adopts and EPA approves a revision to the underlying designated use and criterion consistent with § 131.10 or § 131.11.

(ii) The interim requirements specified in the WQS variance are in effect during the term of the WQS variance and apply for CWA section 402 permitting purposes and in issuing certifications under section 401 of the Act for the permittee(s), pollutant(s), and/or water body or waterbody segment(s) covered by the WQS variance. For these limited purposes, the interim requirements will be the standards applicable for purposes of the CWA under 40 CFR 131.21(c)–(e).

(3) A WQS variance shall not be granted if the designated use and criterion addressed by the proposed WQS variance can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act.

(b) *Submission Requirements:*

(1) A WQS variance must specify the following:

(i) Identifying information: A WQS variance must identify the pollutant(s), permittee(s), and/or the water body or waterbody segment(s) to which the WQS variance applies.

(ii) WQS that apply during a variance for CWA section 402 permitting purposes and in issuing certifications under section 401 of the Act: A WQS variance must specify:

(A) The highest attainable interim use and interim numeric criterion, or

(B) An interim numeric effluent condition that reflects the highest attainable condition for a specific permittee(s) during the term of the variance. Neither (A) nor (B) of this paragraph shall result in any lowering of the currently attained water quality unless a time-limited lowering of water quality is necessary during the term of a variance for restoration activities, consistent with paragraph (b)(2)(ii) of this section.

(iii) Date the WQS variance will expire: States must include an expiration date for all WQS variances, consistent with paragraph (b)(2) of this section. WQS variances must be as short as possible but expire no later than 10 years after state adoption.

(2) The State must submit a demonstration justifying the need for a WQS variance. For a WQS variance to a use specified in section 101(a)(2) of the Act or a sub-category of such a use, the State must submit a demonstration that attaining the designated use and criterion is not feasible during the term of the WQS variance because:

(i) One of the factors listed in § 131.10(g) applies, or

(ii) Actions necessary to facilitate restoration through dam removal or other significant wetland or stream reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

(3) For a waterbody variance, the state must identify and document any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) and location(s) specified in the WQS variance that could be implemented to make progress towards attaining the designated use and criterion. A State must provide public notice and comment for any such documentation.

(c) *Implementing variances in NPDES permits:* Consistent with paragraph (a)(2)(ii) of this section, a WQS variance serves as the basis of a water quality-based effluent limit included in a NPDES permit for the period the variance is in effect. Any limitations required to implement the WQS variance shall be included as conditions of the NPDES permit for the permittee(s) subject to the WQS variance.

(d) *WQS variance renewals:* EPA may approve a WQS variance renewal if the State meets the requirements of this section and provides documentation of the actions taken to meet the requirements of the previous WQS variance. For a waterbody WQS variance renewal, the state must also provide documentation of whether and to what extent BMPs have been implemented to address the pollutant(s) subject to the WQS variance and the water quality progress achieved during the WQS variance period. Renewal of a WQS variance may be disapproved if the applicant did not comply with the conditions of the original WQS variance, or otherwise does not meet the requirements of this section.

■ 9. Add § 131.15 to subpart B to read as follows:

§ 131.15 Compliance schedule authorizing provisions.

A State may, at its discretion and consistent with state law, authorize schedules of compliance for water quality-based effluent limits (WQBELs) in NPDES permits by including a compliance schedule authorizing provision in its water quality standards or implementing regulations. Any such provision is a water quality standard subject to EPA review and approval and must be consistent with sections 502(17) and 301(b)(1)(C) of the Act. Individual compliance schedules issued pursuant to such authorizing provisions are not themselves water quality standards. Individual compliance schedules must be consistent with CWA section 502(17), the state's EPA-approved compliance schedule authorizing provision, and the requirements of §§ 122.2 and 122.47.

Subpart C—Procedures for Review and Revision of Water Quality Standards

■ 10. Amend § 131.20 by revising paragraphs (a) and (b) to read as follows:

§ 131.20 State review and revision of water quality standards.

(a) *State Review.* The State shall from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards; in particular, any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every 3 years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Similarly, a State shall re-examine its water quality criteria to determine if any criteria should be revised in light of any new or updated CWA section 304(a) criteria recommendations to assure that designated uses continue to be protected. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) *Public Participation.* The State shall hold public hearings for the purpose of reviewing or revising water quality standards, in accordance with provisions of State law and EPA's public participation regulation (40 CFR part 25). The proposed water quality

standards revision and supporting analyses shall be made available to the public prior to the hearing.

* * * * *

■ 11. Amend § 131.22 by revising paragraph (b) to read as follows:

§ 131.22 EPA promulgation of water quality standards.

* * * * *

(b) The Administrator may also propose and promulgate a regulation, applicable to one or more States, setting forth a new or revised standard upon determining such a standard is necessary to meet the requirements of the Act. To constitute an Administrator's determination, such determination must:

(1) Be signed by the Administrator or his or her duly authorized delegate, and

(2) Contain a statement that the document constitutes an Administrator's determination under section 303(c)(4)(B) of the Act.

* * * * *

Subpart D—Federally Promulgated Water Quality Standards

■ 12. Amend § 131.34 by revising paragraph (c) to read as follows:

§ 131.34 Kansas.

* * * * *

(c) *Water quality standard variances.* The Regional Administrator, EPA Region 7, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of § 131.14 are met.

■ 13. Amend § 131.40 by revising paragraph (c) to read as follows:

§ 131.40 Puerto Rico.

* * * * *

(c) *Water quality standard variances.* The Regional Administrator, EPA Region 2, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of § 131.14 are met.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit; Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restriction; Final Rule and Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BD57

[Docket No. 130802674–3749–01]

Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restriction

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS is issuing temporary regulations under the authority of Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to: implement an immediate closure of the California thresher shark/swordfish drift gillnet (mesh size ≥14 inches) (DGN) fishery if one sperm whale is observed killed or seriously injured in DGN gear off California, and require all DGN fishing vessels to carry a NMFS-trained observer from August 15, 2013 to January 31, 2014 in a 100% observer coverage area (Zone). The Zone covers nearly all areas in the U.S. exclusive economic zone (EEZ) deeper than the 1,100 fathoms (fm) (2,012 meters (m)) depth contour. Owners/operators of vessels intending to fish with DGN gear will be required to install, activate, carry and operate a vessel monitoring system (VMS) prior to embarking on a DGN fishing trip after the effective date of this rule.

DATES: This rule is effective September 4, 2013 through January 31, 2014. Comments must be received on or before October 4, 2013.

ADDRESSES: You may submit comments on the temporary rule, identified by NOAA–NMFS–2013–0131 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-2013-0131*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* 562–980–4047; Attention: Craig Heberer.
- *Mail:* Craig Heberer, Southwest Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Requests for copies of documents supporting this rule may be obtained from the Southwest Regional Office, NMFS, 501 W Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, telephone: 706–431–9440 (#303), fax: 562–980–4047, email: *craig.heberer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The HMS FMP was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the MSA by regulations at 50 CFR part 660.

Background

NMFS takes this action in accordance with the MSA, the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The ESA requires the Federal government to protect and conserve species and populations that are endangered, or threatened with extinction, and to conserve the ecosystems on which these species depend. The MMPA prohibits, with certain exceptions, the ''take'' of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and products into the United States. All marine mammals are protected under the MMPA.

During the 2010–2011 fishing season, a NMFS-trained observer recorded two sperm whales caught in the DGN fishery in U.S. Federal waters near the border with Mexico. One animal was dead when retrieved, the other was seriously injured. Sperm whales are listed as endangered under the ESA and are designated as depleted under the MMPA. In 2004, NMFS issued a biological opinion on the HMS FMP, including the DGN fishery, and an incidental take statement (ITS) for the FMP. The NMFS Sustainable Fisheries Division engaged in pre-consultation with the NMFS Protected Resources Division upon notice in June 2011 that the takes of two sperm whales during the 2010–2011 fishing season likely exceeded the ITS for the DGN fishery. As a result, consultation was reinitiated in July of 2012, with NMFS completing a biological assessment in September 2012 and a biological opinion in May 2013 (*http://swr.nmfs.noaa.gov/mm/Signed_DGN_BiOp_050213.pdf*) that included a new ITS pertaining to whale bycatch contingent on the issuance of a MMPA 101(a)(5)(E) permit.

The ESA exempts take of listed marine mammals through the issuance of an ITS only if such take is also permitted by section 101(a)(5)(E) of the MMPA. Without a permit under the MMPA, any incidental, but not intentional, take of ESA-listed marine mammals is not exempt from ESA Section 9 take prohibitions. The potential biological removal (PBR) is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Given the determination that incidental takes of sperm whales by the DGN fishery during the 2010–2011 fishing season exceeded the PBR for the California-Oregon-Washington stock of sperm whales, the fishery, as currently configured, could not be issued an MMPA 101(a)(5)(E) permit. As a result, the ITS listed in the 2013 biological opinion for the DGN fishery would not exempt the fishery, as currently configured, from ESA Section 9. This situation also presents serious conservation and management problems in the fishery. If mortality and serious injury of the California-Oregon-Washington stock of sperm whales incidental to this fishery continues to exceed PBR, it could have a long-term adverse effect on the marine environment by preventing the California-Oregon-Washington stock of sperm whales from reaching their optimum sustainable population level and existing as a significant functioning element in the ecosystem.

Based on this information, NMFS is issuing short-term measures to reduce interactions with sperm whales during the 2013–14 fishing season in the DGN fishery. These measures for the 2013–2014 fishing season are needed to ensure that any serious injury or mortality to sperm whales in the DGN fishery does not exceed the PBR and to allow the provision of incidental take coverage under the ESA and MMPA for fishermen in the fishery. NMFS

currently has regulations addressing interactions with several species of marine mammals in the DGN fishery. The Pacific Offshore Cetacean Take Reduction Plan (Plan) at 50 CFR 229.31 includes measures (e.g., pingers, net extenders) to reduce serious injury and mortality of marine mammals in the fishery. NMFS reconvened the Pacific Offshore Take Reduction Team (Team) to recommend measures for the 2013–2014 fishing season that reduce risks to sperm whales, in light of their potential biological removal level and the fishery's 2010 takes, such that the negligible impact determination conditions of MMPA 101(a)(5)(E) could be met. The measures in this rule emerged from the two Team meetings that NMFS convened on July 31, 2013, and August 7, 2013 for the purpose of developing recommendations for reducing sperm whale mortality/serious injury in the DGN fishery to below PBR. NMFS intends to convene the Team later this year or in early 2014 to develop long-term measures for reducing sperm whale (and other strategic stocks, as appropriate) mortality and serious injury in the fishery. NMFS would then amend the Plan's regulations pursuant to Section 118 of the MMPA, and advise the Council should an amendment to the FMP be required.

Management Measures Established by This Temporary Rule

Consistent with ESA, MMPA, and MSA requirements, this rule will establish a fixed cap of one serious injury or mortality for sperm whales in the DGN fishery as determined by NMFS. If the cap is met, the DGN fishery will be closed for the remainder of the season (i.e., until January 31, 2014) consistent with this action being a short-term measure. The rule will also establish a ''100 percent observer-coverage zone'' (Zone) for the 2013–2014 DGN fishing season that is closed to DGN fishing unless the fishing vessel is carrying a NMFS-trained observer. This Zone is specifically defined by latitude and longitude coordinates set out at § 660.713 (f). The Zone covers nearly all areas of the U.S. EEZ that are deeper than the 1,100 fm (2,012 m) depth contour; however, the boundary lines that define the Zone close some areas that are deeper or shallower than the 1,100 fm depth contour. The Zone runs both north and south of Point Conception from the Oregon-California border to the Mexico-California border, generally along the 1,100 fm (2,012 m) depth contour, with the exception of an area seaward of the Santa Lucia Escarpment, and any canyons/basins shoreward of the main north-south 1,100 fm (2,012 m) depth contour (regardless of depth) to facilitate monitoring and enforcement. Vessels that are not carrying a NMFS-trained observer may not conduct DGN fishing in the Zone. Vessels not carrying observers will need to take precautions in setting and retrieving nets when fishing proximate to the Zone to ensure vessels remain shoreward of the boundary. This restriction is being implemented because NMFS long term survey data indicate that on average 90 percent of research vessel sightings of sperm whales in the California Current occurred in waters deeper than 2,000 m. Additionally, observer records indicate that only one interaction between the DGN fishery and sperm whales occurred in waters shallower than 1,100 fm since 1990; and this interaction was adjacent to the 1,100 fm depth contour.

Implementation

Vessel Monitoring System

Owners/operators of vessels intending to fish with large-mesh DGN gear will be required to have installed, activate, carry and operate vessel monitoring system (VMS) units that are type-approved by NMFS during the period of the DGN emergency rule. Owners and operators of vessels in the DGN fishery must: (1) Obtain a NOAA Office of Law Enforcement (OLE) type-approved mobile transceiver unit and have it installed on board the DGN fishing vessel in accordance with the instructions provided by NOAA OLE. You may obtain VMS installation and operation instructions from the NOAA OLE Northwest Division by calling 888–585–5518; and (2) activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a DGN fishing trip, and receive confirmation from NOAA OLE that the VMS transmissions are being received before participating in the DGN fishery. Instructions for submitting an activation report may be obtained from the NOAA, OLE Northwest Division office by calling 888–585–5518. An activation report must be submitted to NOAA OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

Activation Reports

If you are a vessel owner who must use VMS and are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NOAA OLE (206–526–6528) an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identification of the unit as primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NOAA OLE.

Transferring Ownership of VMS Unit

Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NOAA OLE: A new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; and documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

Transceiver Unit Operation

Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the duration of the emergency rule. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the duration of the emergency rule. Once a vessel remains in port for seven days or more, position reporting is required at least once every four hours; however, the mobile transceiver unit must remain in continuous operation at all times. Once the vessel leaves port, the position reporting frequency must resume to at least once every hour, 24 hours a day.

When aware that transmission of automatic position reports has been interrupted, or when notified by NOAA OLE that automatic position reports are not being received, contact NOAA OLE by calling 888–585–5518 and follow the instructions provided. Such instructions may include manually communicating the vessel's position to NOAA OLE or returning to port until the VMS is operable.

After a fishing trip during which interruption of automatic position reports has occurred, replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or

reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider, shall be in accordance with the instructions provided by NOAA OLE and require the same certification. Make the mobile transceiver units available for inspection by NOAA OLE personnel, USCG personnel, state enforcement personnel or any authorized officer. Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed, operated, or maintained improperly. Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

Declaration Reporting Requirements

The operator of any vessel fishing with large mesh DGN gear (mesh size ≥14 inches) for thresher shark/swordfish must provide NOAA OLE with a declaration report before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of California. Gear code declarations are made by calling NOAA OLE NW Division at 888–585–5518.

The operator of a vessel fishing with DGN gear must provide a declaration report to NOAA OLE prior to leaving port on the first trip in which the vessel meets the requirement to install, activate, carry and operate a vessel monitoring system (VMS) unit. The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NOAA OLE. During the period of time that a vessel has a valid declaration report on file with NOAA OLE, it cannot fish with a gear other than a gear type declared by the vessel. Declaration reports will include the vessel name and/or identification number, gear type to be used, and whether or not an observer will be present on the fishing trip. Upon receipt of a declaration report, NMFS will provide a confirmation code to confirm that a valid declaration report was received for the vessel. Vessel owners or operators must retain the confirmation code to verify that a valid declaration report was filed and the declaration requirement was met.

Vessels fishing with DGN gear may declare more than one gear type. If a vessel fishing with DGN gear has an observer on board, the vessel may fish with declared gear types seaward of the eastern boundary of the Zone (generally, in areas seaward of the 1,100 fm (2,012 m) depth contour). However, if a vessel fishing with DGN gear does not have an observer on board, the vessel may only fish with declared gear types shoreward of the eastern boundary of the Zone (generally, in areas shoreward of the 1,100 fm (2,012 m) depth contour. The following gear type declaration codes are available for the thresher shark/swordfish DGN fishery: Open access highly migratory species line gear (Gear Code 66 for Tuna); and other gear (Gear Code 69 for DGN or harpoon).

Pre-Trip Notification

This rule establishes a pre-trip notification requirement for all DGN fishing trips. This requirement will assist the observer provider in deploying observers to cover 100 percent of fishing effort in the Zone and ensure representative observer coverage of the DGN fleet outside of the Zone. DGN vessel owners/operators will be required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide their name, contact information, vessel name, port of departure, and estimated date and time of departure to the observer provider. Upon receipt of a pre-trip notification, the observer provider will notify the DGN vessel owner/operator whether their fishing trip has been selected for observer coverage. Frank Orth & Associates is the NMFS-designated observer provider. Frank Orth & Associates will receive pre-trip notifications at (800) 522–7622 or (562) 427–1822. Pre-trip notifications must be made between 8:00 a.m. and 5:00 p.m. Pacific time, Monday through Friday.

Fishery Closure Procedures

In the event of a serious injury or mortality to a sperm whale, as determined by NMFS, during DGN fishing operations, the fishery will be closed through January 31, 2014. NMFS will notify vessel owners/operators of a DGN fishery closure by VMS communication to the fleet stating when nets may no longer be deployed. Notification will also be made in the **Federal Register**, by postal mail, and a posting on the NMFS regional Web site.

NMFS publishes this emergency action for implementing these short-term management measures for 180 days, the maximum allowed without an extension, under MSA. NMFS does not expect the Zone to adversely impact the DGN fleet, because vessels without observers have flexibility to fish shoreward of the eastern boundary of the Zone (roughly, the 1,100 fm (2,012 m) depth contour) to make up for lost fishing opportunities inside the Zone should an observer be unavailable.

NMFS' policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that emergency action is justified for certain situations where it would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that the issue of setting a cap of one serious injury/mortality for sperm whales, the exclusion of DGN fishing in the Zone without observers, and the VMS requirement meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstances. NMFS' decision to not issue an MMPA 101(a)(5)(E) permit for sperm whales in the DGN fishery in its current configuration and close to the August 15 start date of the fishery in nearshore waters presents an unforeseen event and therefore warrants emergency action. The agency was poised to issue the permit prior to requesting public comments and then revised its anticipated course during the decision-making process based on new information that indicated that take of sperm whales in the fishery exceeded PBR.

This situation also presents serious conservation and management problems in the fishery. Serious injury or mortality of sperm whales at a level above PBR poses problems to the marine environment. Without issuance of a MMPA 101(a)(5)(E) permit, fishermen that incidentally seriously injure or kill any sperm whales during DGN fishing operations would not have incidental take coverage exempting the fishermen from take prohibitions under the ESA, predicated on MMPA requirements. This emergency action essentially establishes short-term measures for the

fishery, with the provision that one sperm whale interaction resulting from DGN fishing operations that has been determined by NMFS to be one serious injury or mortality would immediately close the fishery through January 31, 2014. Sperm whale interactions with the DGN fleet are rare, with sperm whale bycatch observed six times (10 animals) in over 8,300 net sets since 1990. According to NMFS' Southwest Fisheries Science Center (SWFSC) scientists, published data, and recorded depths of observed takes in the DGN fishery, sperm whales are more likely to occur in waters deeper than 1,100 fm (2,012 m). This emergency action would require 100 percent observer coverage of DGN vessels fishing in the Zone (generally, seaward of the 1,100 fm (2,012 m) depth contour running both north and south of Point Conception) and therefore, would increase the likelihood of observing any sperm whale interactions and determining the resulting condition of the animal.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. The Team has the authority to develop management recommendations to NMFS to address sperm whale interactions, but this process would not promptly address sperm whale protection for the upcoming fishing season. There is no other action that NMFS can take through the normal rulemaking process that would enable the agency to implement the short-term management measures in time to reduce the risk of sperm whale mortality/serious injury in the DGN fishery to below PBR for the current DGN fishing season. An emergency action enables NMFS to monitor effort for the current fishing season in areas where sperm whales are most likely to occur. Therefore, the urgency to protect sperm whales through a final rule outweighs the value of providing prior public comment.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that this emergency action to promulgate temporary regulations under the authority of section 305(c) of the MSA is necessary to respond to efforts for reducing serious injury/mortality to sperm whales in the DGN fishery and is consistent with the MSA, ESA, MMPA, and other applicable laws. The rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the MSA.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for advanced public comment. Prior notice and opportunity for advanced public comment would be contrary to the public interest, as delaying action intended to reduce serious injury/mortality to sperm whales in the DGN fishery would increase the likelihood of exceeding PBR for the California-Oregon-Washington stock of sperm whales as established under the MMPA.

The AA finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

Closing the exclusive economic zone off California to fishing in waters seaward of the 1,100 fm (2,012 m) depth contour to unobserved DGN vessels and setting a limit of one serious injury/mortality to sperm whales interacting with DGN gear provides for sperm whale protections. NMFS' long term research vessel sightings of sperm whales in the California Current indicate that 90 percent of sightings occurred in waters deeper than 1,100 fm (2,012 m). Further, NMFS' analyses of DGN observer data indicate that an average of approximately 13 percent of total annual DGN fishing occurred in the Zone in years 2009 through 2011. NMFS' SWFSC scientists have suggested that reducing spatial overlap of fishing effort and sperm whale habitat may be an effective means to reduce the risk of sperm whale bycatch. There is no action that NMFS can take through the normal rulemaking process that would enable NMFS to implement the requirement for observer monitoring of DGN vessels in the Zone and the cap of one sperm whale serious injury/mortality for the DGN fishery to reduce the bycatch risk of this species. This emergency action enables NMFS to keep the fishery operating while avoiding unnecessary adverse biological and economic impacts. Therefore, the urgency to protect sperm whales through a final rule outweighs the value of providing prior public comment. Although this action is being implemented without notice and request for advanced public comment, NMFS is seeking public comment on this rule for purposes of assessing the need to extend the rule or to identify other possible measures for long-term management.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the full 30-day delay in effectiveness for this rule. It would be contrary to the public interest if this rule does not become effective immediately, because the DGN fishery prohibition to fish beyond of 75 nautical miles of shore is no longer in effect from August 15 through the following January 31 which coincides with swordfish becoming more prevalent in the California Current. Without this emergency rule, NMFS would not provide100 percent observer coverage in an area (the Zone) with higher concentrations of sperm whales and close the fishery in the event that there is one serious injury or mortality to a sperm whale in the DGN fishery. These measures are needed to provide adequate protections for sperm whales during the 2013–2014 DGN fishing season. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866. A Regulatory Impact Review was completed and is available upon request from the NMFS, Southwest Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 28, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.713, paragraph (f) is added to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(f) *Sperm whale take mitigation measures.* (1) Drift gillnet (mesh size ≥14 inches) fishing without a NMFS-trained observer is prohibited in the portion of the California EEZ bounded by lines connecting, in order, the following points:

Point	North lat.	West long.	
A	42°0′0″	125°10′12′	Oregon Border at 1100 fm.
B	40°22′12″	124°45′0″	
C	40°22′12″	125°45′0″	
D	38°21′0″	123°52′12″	
E	37°29′24″	123°18′0″	
F	37°29′24″	123°30′36″	
G	37°0′0″	123°30′0″	
H	36°36′0″	122°27′0″	
I	36°16′12″	122°31′12″	
J	35°52′30″	122°16′48″	
K	35°0′0″	121°45′0″	
L	34°54′0″	122°0′0″	
M	34°0′0″	122°0′0″	
N	34°0′0″	121°9′0″	
O	32°21′0″	120°0′0″	
P	31°6′0″	118°45′0″	
Q	30°32′31″	121°52′1″	SW corner of CA EEZ.
R	EEZ Western Edge		200nm buffer from the U.S. Pacific Coast Shoreline.
S	42°0′0″	129°0′0″	NW border of OR EEZ.
A	42°0′0″	125°10′12′	Finish back at Point A.

(2) As soon as practicable following determination by the Regional Administrator that one serious injury to, or mortality of, a sperm whale has resulted from drift gillnet fishing during the period of this emergency rule, the Regional Administrator will contact the fleet via VMS communication and provide the effective date and time that all fishing by vessels registered for use under a drift gillnet permit are prohibited from swordfish fishing until January 31, 2014. Coincidental with the VMS communication, the Regional Administrator will also file a closure notice with the Office of the Federal Register for publication; notify all permit holders by postal mail, and a post a notice on the NMFS regional website.

(3) Drift gillnet vessel owners/operators are required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide to the observer provider their name, contact information, vessel name, port of departure, and estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(4) Drift gillnet vessel owners/operators must provide NOAA OLE with a declaration report before the vessel leaves port on a trip in which the vessel will be used to fish swordfish with drift gillnet gear in U.S. ocean waters between 0 and 200 nm offshore of California.

(5) Drift gillnet vessel owners are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to swordfish fishing during the period of this emergency rule. Vessel owners/operators shall perform the same requirements consistent with 50 CFR 660.14.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC645

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

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

ACTION: Notice.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS hereby issues a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals of three stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA) by the California (CA) thresher shark/swordfish drift gillnet (DGN) fishery (≥14 inch mesh) and the incidental, but not intentional, taking of individuals from one stock by the Washington/Oregon/California (WA/OR/CA) sablefish pot fishery.

DATES: This permit is effective for a three-year period beginning September 4, 2013.

ADDRESSES: Reference material, including the negligible impact determination, for this permit is available on the Internet at the following address: *http://swr.nmfs.noaa.gov/.* Recovery plans for these species are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals.* Information on the Pacific Offshore Cetacean Take Reduction Plan is available the Internet at the following address: *http://www.nmfs.noaa.gov/pr/interactions/trt/poctrp.htm.*

Copies of the reference materials may also be obtained from the Protected Resources Division, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, NMFS Southwest Region, (562) 980–3232, or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.,* states that NOAA's National Marine Fisheries Service (NMFS), as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On May 8, 2013 (78 FR 26751), NMFS proposed to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) to incidentally take individuals from three stocks of threatened or endangered marine mammals: the CA/OR/WA stock of fin whales (*Balaenoptera physalus*), the CA/OR/WA stock of humpback whales (*Megaptera novaeangliae*), and the CA/OR/WA stock of sperm whales (*Physeter macrocephalus*); and to vessels registered in the and the WA/OR/CA sablefish pot fishery to incidentally take individuals from the CA/OR/WA stock of humpback whales. The data for considering these authorizations were reviewed coincident with the preparation of the 2012 MMPA List of Fisheries (LOF or List) (76 FR 73912; November 29, 2011), the 2011 marine mammal stock assessment reports (SARs) (Carretta *et al.* 2012; Allen and Angliss 2011), the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), Pacific Coast Groundfish FMP, recovery plans for these species (available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*), the Emergency Rule (RIN 0648–BD57), and other relevant sources.

Based on observer data and marine mammal reporting forms, the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) and the WA/OR/CA sablefish pot fishery are the Category I or II fisheries that operate in the ranges of affected stocks, namely the CA/OR/WA stocks of fin, sperm whales, and humpback whales. A detailed description of these fisheries can be found in the negligible impact determination (see **ADDRESSES**). All other Category II fisheries that interact with the marine mammal stocks observed off the coasts of Washington, Oregon, and California are State-managed and are not considered for authorization under this permit. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report injuries or mortality of marine mammals incidental to their operations.

In accordance with the MMPA, NMFS has made a determination that incidental taking from commercial fishing will have a negligible impact on the fin whale, CA/OR/WA stock; humpback whale, CA/OR/WA stock; and sperm whale, CA/OR/WA stock. This authorization is based on a determination that this incidental take will have a negligible impact on the affected marine mammal stocks, recovery plans have been developed for each species, a monitoring program is established, vessels in the fisheries are registered, and that the necessary take reduction plan (TRP) is in place for the humpback and sperm whale stocks. A TRP is not required for the CA/OR/WA stock of fin whales because mortality and serious injury of this stock incidental to the CA thresher shark/swordfish DGN fishery and the WA/OR/CA sablefish pot fishery is at insignificant levels approaching a zero mortality and serious injury rate. NMFS also issued emergency regulations to reduce risk of sperm whale takes by the West Coast swordfish drift gillnet fishery (RIN 0648–BD57) below the stock's Potential Biological Removal (PBR) level of 1.5 animals; NMFS developed the measures in the emergency rule based on recommendations from the Pacific Offshore Cetacean Take Reduction Team. Revisions to the draft negligible impact determination were based on issuance of the emergency rule and on public comment received on the draft negligible impact determination (78 FR 26751, May 8, 2013).

Basis for Determining Negligible Impact

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a

negligible impact determination (see **ADDRESSES**). NMFS calculated the total human-related serious injury and mortality to make a negligible impact determination for this authorization and included all human sources, such as commercial fisheries and ship strikes. See the negligible impact determination for more detailed information.

The average annual serious injury and mortality, from all sources, is below PBR for the CA/OR/WA fin and humpback whale stocks, but is above PBR for the CA/OR/WA sperm whale stock. At this time, no other fishery, with the exception of the CA thresher shark/swordfish DGN fishery (≥14 inch mesh), has documented takes of sperm whales. As a result, NMFS convened the Pacific Offshore Cetacean Take Reduction Team (Team) on July 31 and August 7, 2013 and charged the Team with developing recommendations to reduce sperm whale serious injury and mortality in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh). NMFS considered the Team's recommendations and developed an emergency rule (RIN 0648–BD57) to modify the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) to reduce the risk of mortality and serious injury of sperm whales incidental to the fishery. In doing so, NMFS determined that the negligible impact determination conditions of the MMPA section 101(a)(5)(E) could be met, thereby allowing NMFS to provide incidental take authorization under the ESA and MMPA for the 2013–2014 fishing season.

The emergency rule, effective through January 31, 2014, includes several provisions to reduce risk to sperm whales and monitor the fishery. Specifically, the emergency rule provides for immediate termination of the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) if one sperm whale is observed killed or seriously injured in DGN gear off California and establishes a 100-percent observer coverage zone that is closed to DGN fishing during the August 15, 2013 to January 31, 2014 fishing season unless the fishing vessel is carrying a NMFS-trained observer. The zone covers nearly all areas in the U.S. exclusive economic zone (EEZ) deeper than the 1,100 fathoms (fm) (2,012 meters (m)) depth contour. Owners/operators of vessels intending to fish with DGN gear are required to install, activate, carry and operate a vessel monitoring system prior to embarking on a DGN fishing trip.

NMFS intends to reconvene the Team to consider long-term measures for reducing sperm whale mortality and serious injury in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) in subsequent fishing seasons. It is expected that any future changes to the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) that may occur as a result of modifying the Pacific Offshore Cetacean Take Reduction Plan would not change the negligible impact analysis. However, if a mortality or serious injury of a sperm whale (CA/OR/WA stock) occurs in any fishery, that would be included in the total fishery-related serious injury or mortality considered in a future negligible impact determination. The underlying data indicate that there is a very low likelihood that another fishery may take a sperm whale, but in the unlikely event that a mortality or serious injury occurs during the three-year time frame for this authorization, the negligible impact determination would be re-evaluated pursuant to section 101(a)(5)(E)(iii), (iv), and (v) of the MMPA (16 U.S.C. 1371(a)(5)(E)(iii), (iv), and (v)). Thus, based on this information, the emergency rule (RIN 0648–BD57), and the applicability of Criterion 3, NMFS determines that the mortality and serious injury incidental to commercial fisheries will have a negligible impact on the CA/OR/WA stock of sperm whales.

In conclusion, based on the negligible impact criteria outlined in 1999 (64 FR 28800), the 2011 Pacific SARs (Carretta *et al.* 2012), the best scientific information and data available, and the measures required in the emergency rule (RIN 0648–BD57) to modify the CA thresher shark/swordfish DGN fishery (≥14 inch mesh), NMFS has determined that for a period of up to three years, mortality and serious injury incidental to the CA thresher shark/swordfish DGN fishery will have a negligible impact on the CA/OR/WA stocks of sperm whales, humpback whales, and fin whales, and mortality and serious injury incidental to the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales.

The available serious injury and mortality data for the CA/OR/WA stock of fin whales meet the factors for negligible impact determination under Criterion 2 of the 1999 criteria, including because the annual average fisheries-related mortality is less than 0.1 PBR. The available data for the CA/OR/WA stock of humpback whales meet the factors for negligible impact determination under Criterion 3 of the 1999 criteria, including because the expected fisheries-related mortality is greater than 0.1 PBR and less than PBR and the population is increasing. Total fishery-related serious injury and mortality for the CA/OR/WA stock of sperm whales is greater than 0.1 PBR and is anticipated to be less than PBR following implementation of the emergency rule to modify the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) fishery (RIN 0648–BD57), and the population is stable; thus, the conditions of Criterion 3 of the 1999 negligible impact criteria are met for this stock and would be re-evaluated pursuant to section 101(a)(5)(E)(iii), (iv), and (v) of the MMPA. Therefore, the identified commercial fisheries within the range of the CA/OR/WA stocks of fin, humpback, and sperm whales may be permitted subject to their individual review and the certainty of relevant data, and provided that the other provisions of MMPA section 101(a)(5)(E) are met.

Determinations for the Permit

Based on the final negligible impact determination, NMFS concludes that the incidental mortality and serious injury from the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) will have a negligible impact on the CA/OR/WA stock of humpback whales, fin whales, and sperm whales and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. The impacts on the human environment of continuing and modifying the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) (as part of the FMP for U.S. West Coast Fisheries for Highly Migratory Species) and the WA/OR/CA sablefish pot fishery (as part of the Pacific Coast groundfish FMP), including the taking of threatened and endangered species of marine mammals, were analyzed in: the Pacific Fishery Management Council Highly Migratory Species Fishery Management Plan final environmental impact statement (August 2003); the Pacific Fishery Management Council Proposed Harvest Specifications and Management Measures for the 2013–2014 Pacific Coast Groundfish Fishery and Amendment 21–2 to the Pacific Coast Fishery Management Plan (September 2012); Risk assessment of U.S. West Coast groundfish fisheries to threatened and endangered marine species (NWFSC 2012); and in the Final Biological Opinion prepared for the West Coast groundfish fisheries (NMFS 2012a) and the Final Biological Opinion (May 7, 2013) as amended (August 21, 2013), for the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) (NMFS 2012b), pursuant to the ESA.

Because this permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents. NMFS reviews the remaining requirements to issue a permit to take the subject listed species incidental to the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fisheries in the sections below.

Recovery Plans

Recovery Plans for humpback whales, fin whales, and sperm whales have been completed (see *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*). Accordingly, the requirement to have recovery plans in place or being developed is satisfied for all three stocks.

Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Participants in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fisheries already provide the information needed by NMFS to register their vessels for the incidental take authorization under the MMPA either through the Federal groundfish limited entry permit process or the Federal vessel monitoring system. Therefore, vessel registration for an MMPA authorization is integrated through those programs in accordance with MMPA section 118.

Monitoring Program

The CA thresher shark/swordfish DGN fishery (≥14 inch mesh) has been observed by NMFS-certified observers since the early 1990s. Levels of observer coverage vary over time but are adequate to produce reliable estimates of mortality and serious injury of listed species (e.g., from 2000–2010, coverage ranged from 12.0 to 22.9 percent). As part of the Pacific Coast Groundfish FMP and MSA objectives, the WA/OR/CA sablefish pot fishery is observed at about 1–6% per year. Accordingly, as required by MMPA section 118, a monitoring program is in place for both fisheries.

Additionally, the emergency rule (RIN 0648–BD57) establishes a 100-percent observer coverage zone that is closed to DGN fishing during the August 15, 2013 to January 31, 2014 fishing season unless the fishing vessel is carrying a NMFS-trained observer. The zone covers nearly all areas in the U.S. EEZ deeper than the 1,100 fm (2,012 meters m) depth contour. NMFS will reconvene the Take Reduction Team to review this requirement, among other issues, and will take appropriate action for subsequent fishing seasons.

Take Reduction Plans

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. The stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA (MMPA section 3(19)(C)).

In 1996, the Pacific Offshore Cetacean Take Reduction Team was convened to develop a TRP to address the incidental taking of several strategic stocks in the CA thresher shark/swordfish drift gillnet fishery. A TRP was implemented, through regulations, in October, 1997 (62 FR 51813) and has been in place ever since. The 2011 U.S. Pacific Marine Mammal Stock Assessment Reports (Carretta *et al.* 2012) and the MMPA List of Fisheries (*http://www.nmfs.noaa.gov/pr/interactions/lof/*) indicate no fin whales have interacted with either the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) or the WA/OR/CA sablefish pot fishery in the last five years, the time period used to determine PBR levels for all marine mammal stocks. As such, a take reduction plan is not required for the CA/OR/WA stock of fin whales because mortality and serious injury of this stock incidental to commercial fishing operations is at insignificant levels approaching a zero mortality and serious injury rate. The short- and long-term goals of a TRP are to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR and to insignificant levels approaching a zero mortality and serious injury rate (i.e., 10% of PBR), respectively. MMPA section 118(b)(2) states that fisheries maintaining such mortality and serious injury levels are not required to further reduce their mortality and serious injury rates.

The CA/OR/WA humpback whale stock, also a strategic stock, interacts with the WA/OR/CA sablefish pot/trap fishery and other Category II fisheries. However, the obligations to develop and implement a TRP are subject to the availability of funding. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing Take Reduction Teams (TRTs) and developing TRPs. Through this process, NMFS evaluated the available data on abundance and fishery-related mortality for the CA/OR/WA stock of humpback whales, and identified them as a lower priority compared to other marine mammal stocks and fisheries for establishing TRTs, based on increasing abundance as well as mortality and serious injury levels below the stock's PBR. The CA/OR/WA stock of humpback whales has been designated as strategic because it is ESA-listed (MMPA section 3(19)(C)) and not because direct human-caused mortality exceeds PBR (MMPA section 3(19)(A)). In addition, NMFS is currently collecting data to characterize fixed gear fisheries and assess their risk to large whales off the U.S. west coast. Given these factors and NMFS' priorities, developing a TRP for the WA/OR/CA sablefish pot trap fishery and other similar Category II fisheries will be deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for developing new TRPs.

Current Permit

As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized fisheries have been satisfied: the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fishery. Accordingly, NMFS hereby issues a permit to participants in the Category I CA thresher shark/swordfish DGN fishery (≥14 inch mesh) for the taking of CA/OR/WA humpback whales, CA/OR/WA fin whales, and CA/OR/WA sperm whales, and participants in the Category II WA/OR/CA sablefish pot fishery for the taking of CA/OR/WA stock of humpback whales, incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortality must be reported to

NMFS. If NMFS determines at a later date that incidental mortality and serious injury from commercial fishing is having more than a negligible impact on the CA/OR/WA stocks of fin, humpback, or sperm whales, NMFS may use its emergency authority under MMPA section 118 to protect the stock and may modify the permit issued herein.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was most recently published, as required, on February 27, 2012 (77 FR 11493), which authorized the taking of threatened or endangered marine mammals incidental to one Category II fishery along the west coast of the United States. With issuance of the current permit, NMFS adds the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) fishery and WA/OR/CA sablefish pot fishery to this list (Table 1).

TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE SPECIFIC THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

Fishery	Category	Marine mammal stock
HI deep-set (tuna target) longline/set line	I	Humpback whale, CNP stock.
CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh)	I	Fin whale, CA/OR/WA stock.
		Humpback whale, CA/OR/WA stock.
		Sperm whale, CA/OR/WA stock.
Hi shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands flatfish trawl	II	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Island pollock trawl	II	Fin whale, NEP stock.
		Steller sea lion, Western stock.
AK Bering Sea sablefish pot	II	Humpback whale, WNP stock.
		Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands Pacific cod longline fisheries	II	Steller sea lion, Western stock.
WA/OR/CA sablefish pot fishery	II	Humpback whale, CA/OR/WA stock.
AK miscellaneous finfish set gillnet	III	Steller sea lion, Western stock.
AK Gulf of Alaska sablefish longline	III	Sperm whale, NP stock.
		Steller sea lion, Eastern stock.
AK halibut longline/set line (State and Federal waters)	III	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Atka mackerel trawl	III	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Pacific cod trawl	III	Steller sea lion, Western stock.
AK Gulf of Alaska Pacific cod trawl	III	Steller sea lion, Western stock.
AK Gulf of Alaska pollock trawl	III	Fin whale, NEP stock.
		Steller sea lion, Western stock.
CA set gill net	III	None documented.
CA/OR/WA salmon troll	III	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	III	None documented.
WA/OR North Pacific halibut longline/set line	III	None documented.
CA halibut bottom trawl	III	None documented.
WA/OR/CA shrimp trawl	III	None documented.

Comments and Responses

On May 8, 2013 (78 FR 26751), NMFS proposed to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) and the WA/OR/CA sablefish pot fishery to incidentally take individual animals from the CA/OR/WA stocks of fin, humpback, and sperm whales. NMFS solicited comments on the proposal to issue a permit and the negligible impact determination and received letters containing comments from four organizations, the Marine Mammal Commission (Commission) and a joint letter from the Center for Biological Diversity, Turtle Island Restoration Network, and Oceana. Each letter contained multiple comments. NMFS also received one petition letter signed by 13,425 people, and one individual sent the exact same petition letter separately.

Comment 1: The Commission briefly summarized NMFS' findings for the proposed permit and recommended that NMFS comply with the MMPA section 101(a)(5)(E) by issuing the permit to the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) for the CA/OR/WA fin and humpback whale stocks and the WA/OR/CA sablefish pot fishery for the CA/OR/WA humpback whale stock. The Commission also recommended that NMFS comply with MMPA section 101(a)(5)(E) by issuing the permit to the WA/OR/CA sablefish pot fishery for the CA/OR/WA fin and sperm whale stocks.

Response: NMFS agrees and is issuing the permit as required by the MMPA. NMFS clarifies that the permit will be issued for the WA/OR/CA sablefish pot fishery for the CA/OR/WA humpback whale stock, but not for the CA/OR/WA fin and sperm whale stocks as these two stocks do not interact with this fishery.

Comment 2: The Commission recommended that NMFS, before authorizing the take of sperm whales in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh), account for negative bias in the serious injury and mortality estimates and demonstrate that the available survey data and the degree of uncertainty in the data on population size and trends, reproductive rate and serious injury and mortality estimates provide statistical evidence that the stock is stable and not declining. Further, the Commission recommended that ''total fisheries-related serious injuries and mortalities'' should include extrapolated values from the observed number of serious injury or mortality with the corresponding observer coverage rate, not just the observed number of serious injuries and mortalities. The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana provided a similar comment and also indicated that takes of sperm whales exceeded the PBR of 1.5 animals.

Response: With respect to bias and uncertainty and the PBR equation, NMFS notes that PBR is based upon

conservative estimates of abundance and Rmax and includes a recovery factor (0.1 for sperm whales). The PBR approach was thoroughly tested in simulation trials and found to be robust to over-estimates of Rmax, underestimates of mortality, and low precision of abundance and mortality estimates. Further, NMFS has established that the CA/OR/WA sperm whale stock is not decreasing; therefore, it is either stable or increasing (Carretta *et al.* 2012).

NMFS agrees that further analysis of the CA/OR/WA sperm whale stock was warranted. As recommended by the Commission, the negligible impact determination analysis now includes the estimated mortality and serious injury as an extrapolated value based on the takes observed by a NMFS-certified fishery observer and the observer coverage for that year.

Comment 3: The Commission noted that while NMFS is developing a Take Reduction Plan for the sablefish pot fishery, the details of that process have yet to be published and no Take Reduction Team has been formed.

Response: As noted earlier in this notice, MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs if insufficient funding is available to develop and implement TRPs for all applicable stocks and fisheries. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As such, NMFS prioritizes which stocks and fisheries to address under a TRP. MMPA section 118(f) provides that if there is insufficient funding available to develop and implement a take reduction plan for stocks that interact with Category I and II fisheries, the Secretary shall give highest priority to the development of TRP's for species or stocks whose level of incidental mortality and serious injury exceeds PBR, that that have small population size, and those that declining most rapidly. Further, NMFS notes that the CA/OR/WA stock of humpback whales has been designated as strategic because it is ESA-listed (MMPA section 3(19)(C)) and not because direct human-caused mortality exceeds PBR (MMPA section 3(19)(A)). At this time, developing a TRP for the WA/OR/CA sablefish pot trap fishery and other similar Category II fisheries will be deferred under section 118 as other stocks/fisheries are a higher priority for developing new TRPs.

In the meantime, NMFS has identified conservation recommendations for humpback whales in the biological opinion, dated December 7, 2012, on the Continuing Operation of the Pacific Coast Groundfish Fishery, that provides general guidance for unique, visual marking of sablefish pot/trap gear as identifiable to a specific fishery, as well as guidance to report, track, and retrieve pot/trap gear that becomes lost and minimize the loss of pot/trap gear. Consistent with the terms and conditions of that biological opinion, the Pacific Fishery Management Council recently established the Pacific Coast Groundfish and Endangered Species Work Group, to serve as a multi-party advisory body to the Council for the purpose of supporting ESA compliance for species including humpback whales. One of the work group's duties will be to propose, for Council consideration, conservation and management measures to minimize bycatch of the aforementioned species. NMFS anticipates that this group will draw from the conservation recommendations developed in the biological opinion when considering measures. Appointments to the workgroup will be made at the September 2013 Council meeting, and a first meeting will follow this coming fall/winter. Lastly, over the last four years, NMFS has been collecting data and conducting a risk assessment of the impact of fixed gear fisheries, including the sablefish pot fishery, on large whales off the United States. This assessment will help NMFS to determine whether additional data collection would be necessary to convene a TRT.

Comment 4: The Commission questioned whether the observer coverage in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) is sufficient to meet the MMPA's mandate under section 118(d)(1)(A) that such programs be adequate to ''obtain statistically reliable estimates of incidental mortality and serious injury'' or describe plans for attaining the recommended 30 percent coverage level. Similarly, Center for Biological Diversity, Turtle Island Restoration Network, and Oceana opposed the issuance of the permit because the existing monitoring programs for the fisheries considered in the proposed authorization do not meet the MMPA's requirement to provide statistically reliable estimates of serious injury and mortality.

Response: The CA thresher shark/swordfish DGN fishery (≥14 inch mesh) has been observed by NMFS-certified observers since the early 1990s. Observer coverage levels in the fishery vary over time but are adequate to produce reliable estimates of mortality and serious injury of listed species (e.g., from 2000–2010, coverage ranged from 12.0 to 22.9 percent). Additionally, the recent emergency rule (RIN 0648–BD57) requires increased observer coverage in the fishery. Specifically, the rule establishes a 100-percent observer coverage zone that is closed to DGN fishing during the August 15, 2013 to January 31, 2014 fishing season unless the fishing vessel is carrying a NMFS-trained observer. The zone covers nearly all areas in the U.S. EEZ deeper than the 1,100 fm (2,012 m) depth contour. Therefore, 100% observer coverage is required in areas deeper than the 1,100 fm (2,012 m) depth contour, and NMFS hopes to attain at least 30% observer coverage in other areas where fishing will occur. NMFS expects to reconvene the Take Reduction Team to review this monitoring requirement, among other issues, and would take appropriate action for subsequent fishing seasons.

Comment 5: The Commission noted that the sablefish pot fishery has been subject to much lower observer coverage and recommended that NMFS describe alternative approaches, such as gear marking, to obtain reliable estimates of serious injury and mortality rates in the sablefish pot fishery.

Response: The observer coverage for the WA/OR/CA sablefish pot fishery is at 1–6% per year, and NMFS expects to maintain this level of coverage. Observer programs have not observed entangled humpback whales because the interactions are occurring when the fishing vessel is not present (the pot gear is left unattended). The probability of observing a take in this fishery is therefore extremely rare. Large whales can swim considerable distances after becoming entangled in such gear, so takes can go unobserved in these fisheries even if observers are on board. NMFS has records of entangled whales, including humpback whales, from opportunistic sightings reported to stranding networks, not from observer programs.

NMFS acknowledges the Commission's recommendation to describe alternative approaches to obtain reliable estimates of serious injury and mortality rates in the sablefish pot fishery; and, as discussed in Comment 3, NMFS has identified conservation recommendations for humpback whales in the biological opinion, dated December 7, 2012, on the Continuing Operation of the Pacific Coast Groundfish Fishery, that provide general guidance for unique, visual marking of sablefish pot/trap gear as identifiable to a specific fishery, as well as guidance to report, track, and retrieve pot/trap gear that becomes lost, and

guidance to minimize the loss of pot/trap gear.

Comment 6: The Commission noted that the criteria for establishing a negligible impact determination under section 101(a)(5)(E) of the MMPA are not well defined. The Commission recommended that NMFS, in consultation with the Commission, review the negligible impact determination criteria and their application, and take the necessary steps to establish improved criteria that are clear, logical, internally consistent, and cover all probable scenarios. In addition, the Commission stated that NMFS should examine its other authorities that play a part in making determinations under section 118 of the MMPA to identify possible modifications to fishing gear and practices that would reduce the likelihood of serious injury or mortality to the lowest degree practicable and further efforts to satisfy the zero mortality rate goal of the MMPA.

Response: NMFS agrees that the criteria for establishing a negligible impact determination under section 101(a)(5)(E) of the MMPA should be reviewed and appreciates the Commission's willingness to work with NMFS and to review and, if necessary, modify the criteria. NMFS will also continue to work with TRTs to develop take reduction measures that achieve the MMPA's long-term goal for TRPs.

Comment 7: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana opposed the issuance of the permit because the proposed authorization included no measures to (1) reduce entanglements and loss of fishing gear; (2) collect better data to quantify loss of gear from fisheries; and (3) encourage the removal of derelict fishing gear and proper disposal.

Response: Authorization under section 101(a)(5)(E) of the MMPA requires a determination that (a) the incidental mortality and serious injury incidental to commercial fisheries will have a negligible impact on the stock or species; (b) a recovery plan has been or is being developed; and (c) where required, a monitoring program is established, vessels are registered accordingly, and a Take Reduction Plan has been or is being developed. These authorizations themselves do not include measures that will reduce entanglements, collect better data, or encourage the removal of derelict fishing gear. However, NMFS implements other programs to address marine mammal entanglement in fishing gear, such as the Pacific Offshore Cetacean Take Reduction Plan and ESA section 7 consultations on FMPs (see Response to Comment 3).

Comment 8: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana stated that NMFS neglected to include in its tally of sperm whale serious injury events the observed collision in 2007 between a sperm whale and a limited entry fixed gear vessel, fishing with longline gear and participating in the sablefish fishery. Commenters indicated that the serious injury should be attributed to this fishery, which includes sablefish and longlines.

Response: NMFS disagrees. The tally for total human-caused serious injury and mortality did include the mortality of this sperm whale, but the event was not considered a fisheries-related serious injury or mortality as the cause of death was a ship strike and not related to interactions with fishing gear. This interaction was applied to non-fisheries mortality and included in the total human-caused mortality figure.

Comment 9: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana stated that NMFS must consider additional measures to mitigate the take of endangered marine mammals in process of its determination and alternatives should include examination of whether a closed area may protect endangered marine mammals based on the density data NMFS has collected.

Response: NMFS agrees and has modified the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) in a separate emergency rule (RIN 0648–BD57) to reduce risk to sperm whales.

Comment 10: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana stated that NMFS did not consider all Category I and II fisheries that seriously injure and kill the fin, humpback, and sperm whales in California, Oregon, and Washington and that it is improper to issue a permit for some commercial fisheries while stating that NMFS will not consider others operating in violation of the MMPA by taking the same stocks.

Response: NMFS considered all fishery-related serious injury and mortality to the CA/OR/WA stocks of fin, humpback, and sperm whales in making its negligible impact determination. All recorded takes from all fisheries that interact with the CA/OR/WA stocks of fin, humpback, and sperm whales are accounted for in the analysis. In this notice, NMFS is authorizing incidental take by commercial fishers in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) and the WA/OR/CA sablefish pot fishery to take specific marine mammal stocks (see Table 1). The remaining Category II fisheries that interact with the marine mammal stocks observed off the coasts of Washington, Oregon, and California are state-managed and not considered under this permit for authorization of incidental take by fishers in those state-managed fisheries. Serious injuries and mortalities attributed to the state-managed fisheries were, however, included in the tallies of take in the negligible impact determination analysis.

Comment 11: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana stated that the proposed authorization must be self-effectuating with respect to the expiration date of the permit. Commenters further explained that based on NMFS' history of issuing authorizations, the proposed authorization may in practice allow take of endangered whales for six to seven years and that the MMPA section 101(a)(5)(E) authorization allow incidental take ''during any period of up to 3 consecutive years.'' Therefore, issuing the permit without language that requires the fishery to shut down or otherwise avoid incidental take of marine mammals at the expiration of the permit is outside of NMFS' statutory authority.

Response: NMFS acknowledges that there have been delays between the expiration of one 101(a)(5)(E) authorization and the issuance of another. Authorization to incidentally take endangered marine mammals under MMPA 101(a)(5)(E) is for a period of up to three consecutive years.

Comment 12: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana stated that the permit could not be issued because no take reduction plan has or is being developed for the fin whale because the 1997 Pacific Offshore Take Reduction Plan did not anticipate the incidental bycatch of fin whales in the California drift gillnet fishery.

Response: The MMPA List of Fisheries (*http://www.nmfs.noaa.gov/pr/interactions/lof/*) indicates that fin whales do not interact with the CA thresher shark/swordfish DGN fishery or the WA/OR/CA sablefish pot fishery; and, as indicated in the 2011 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.* 2012), no fin whales have interacted with either of these fisheries in the last five years, the time period used to determine PBR. Take Reduction Plans are not required for the CA/OR/WA stock of fin whales

because mortality and serious injury of this stock incidental to commercial fishing operations is at insignificant levels approaching a zero mortality and serious injury rate.

Comment 13: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana state that the proposed authorization will violate section 7 of the ESA without completion of formal consultation regarding NMFS' issuance of a MMPA section 101(a)(5)(E) permit authorizing take of endangered fin, humpback, and sperm whales.

Response: NMFS has complied with the ESA for the issuance of the MMPA permit through the issuance of a biological opinion on December 7, 2012 for the WA/OR/CA sablefish pot fishery, a biological opinion on May 2, 2013 for the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh), and updated memo on August 21, 2013 to account for the emergency rule (RIN 0648–BD57).

Comment 14: The Commission and the Center for Biological Diversity, Turtle Island Restoration Network, and Oceana stated that NMFS needs to make the finding that the sperm whale stock is either stable or increasing and that NMFS cannot assume for the purposes of the negligible impact determination that the stock is stable or increasing, especially given that the most recent estimate from 2008 survey is the lowest to date.

Response: As described in response to Comment 2, NMFS has established that the CA/OR/WA sperm whale stock is not decreasing; therefore, it is either stable or increasing. Although there remains some uncertainty related to the abundance of the population, the apparent trend for sperm whales in the Pacific Ocean is an increase, and this increase is occurring even with current levels of mortality and serious injury.

Comment 15: The Center for Biological Diversity, Turtle Island Restoration Network, and Oceana requested that NMFS prescribe emergency regulations that reduce the incidental mortality and serious injury in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) as requested in a letter sent to NMFS on September 12, 2012; reconvene the Take Reduction Team for the purposes of modifying the existing Take Reduction Plan so as to reduce mortality and serious injury of all marine mammals in the fishery to insignificant levels approaching a zero mortality and serious injury rate (i.e., 10% of PBR); and issue a section 101(a)(5)(E) permit only if such modifications to the Take Reduction Plan are deemed likely to reduce take of endangered marine mammals to levels below 10% of PBR.

Response: Modifications to the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) were made in an emergency rule to reduce risk of sperm whale takes by the West Coast swordfish drift gillnet fishery (RIN 0648–BD57) in accordance with the MSA, the ESA, and the MMPA for the 2013/2014 fishing season. These measures emerged from Pacific Offshore Cetacean Take Reduction Team meetings, which NMFS convened on July 31 and August 7, 2013. The Team was charged with developing recommendations to reduce sperm whale mortality and serious injury in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh). NMFS considered the Team's recommendations and developed an emergency rule to modify the fishery and reduce risk to sperm whales during the 2013–14 fishing season. The emergency rule provides for immediate termination of the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) if one sperm whale is observed killed or seriously injured in the fishery and establishes a 100-percent observer coverage zone that is closed to DGN fishing during the August 15, 2013 to January 31, 2014 fishing season unless the fishing vessel is carrying a NMFS-trained observer. The zone covers nearly all areas in the U.S. EEZ deeper than the 1,100 fm (2,012 m) depth contour. Owners and operators of vessels intending to fish in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) will be required to install, activate, carry, and operate a vessel monitoring system. NMFS intends to convene the Take Reduction Team to consider long-term measures for reducing sperm whale mortality and serious injury in the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) in subsequent fishing seasons.

Comment 16: NMFS received one petition letter signed by 13,425 people and one individual opposing the three-year authorization urging the closure of the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) fishery and the denial of the permit, based upon underfunded monitoring of the fishery and marine mammal bycatch associated with the fishery (specifically sperm whales).

Response: See responses above under Comments 2, 4, 7, 9, and 16.

Dated: August 28, 2013.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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