AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 232 December 3, 2013

Pages 72533–72788

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 78, No. 232

Tuesday, December 3, 2013

Agriculture Department
See Food Safety and Inspection Service

Antitrust Division
NOTICES
National Cooperative Research and Production Act; Membership Changes:
3D PDF Consortium, Inc., 72713
Pistoia Alliance, Inc., 72713–72714

Antitrust
See Antitrust Division

Bureau of Safety and Environmental Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Permit to Drill, 72688–72693
Application for Permit to Modify, 72693–72699

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72677–72679

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72679–72680

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Defense Department
RULES
Operational Contract Support, 72572–72573
PROPOSED RULES
Federal Acquisition Regulation:
Higher-Level Contract Quality Requirements, 72620–72622

Education Department
PROPOSED RULES
Charter Schools Program Grants for National Leadership Activities:
Priorities, Requirements, and Definitions, 72600–72605

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program:
Standards for Certain Consumer Products, 72533–72534

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Maricopa County Area; Revisions, 72579–72580
Hospital/Medical/Infectious Waste Incinerator Negative Declaration for Designated Facilities and Pollutants:
Michigan and Wisconsin, 72581–72583
PROPOSED RULES
Air Quality State Implementation Plans for Designated Facilities and Pollutants; Approvals and Promulgations:
Virginia; Control of Emissions from Existing Sewage Sludge Incineration Units, 72609–72611
Air Quality State Implementation Plans; Approvals and Promulgations:
Missouri, 72608–72609
Hospital/Medical/Infectious Waste Incinerator Negative Declaration for Designated Facilities and Pollutants:
Michigan and Wisconsin, 72611–72612
Waste Isolation Pilot Plant Compliance with Disposal Regulations; Criteria for Certification and Recertifications:
Panel Closure Redesign, 72612–72620
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Sulfur Content of Motor Vehicle Gasoline under the Tier 2 Rule, 72675–72676
Draft National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Industrial Activities, 72676–72677

Federal Aviation Administration
RULES
Airworthiness Directives:
Diamond Aircraft Industries GmbH Airplanes, 72568–72570
General Electric Company Turbofan Engines, 72552–72554, 72567–72568
Gulfstream Aerospace Corporation Airplanes, 72554–72558
The Boeing Company Airplanes, 72550–72552, 72558–72567
PROPOSED RULES
Airworthiness Directives:
British Aerospace Regional Aircraft Airplanes, 72598–72599
NOTICES
Meetings:
RTCA Program Management Committee, 72747–72748

Federal Deposit Insurance Corporation
RULES
Policy Statements:
Principles for Development and Distribution of Annual Stress Test, 72534–72537

Federal Energy Regulatory Commission
RULES
Version 5 Critical Infrastructure Protection Reliability Standards, 72756–72787

NOTICES
Applications:
Florida Gas Transmission Company, LLC, 72668–72669
Goodwin Power, LLC, 72668
Combined Filings, 72669–72671
Environmental Assessments; Availability, etc.:
Northern Natural Gas Co.; West Leg 2014 Expansion Project, 72671–72672
Filings:
Owensboro Municipal Utilities v. Louisville Gas and Electric Company Kentucky Utilities Co., 72672
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
Yellow Jacket Energy, LLC, 72673
Meetings:
Midcontinent Independent System Operator, Inc.; Technical Conference, 72673–72674
Zero Rate Reactive Power Rate Schedules, 72673
Records Governing Off-the-Record Communications, 72674
Requests under Blanket Authorization:
Dominion Transmission, Inc., 72674–72675

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72748–72749

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
90-Day Finding on a Petition to List 11 Tarantula Species in the Genus Poecilotheria, 72622–72625

Food Safety and Inspection Service
PROPOSED RULES
Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products, 72597–72598
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pathogen Reduction/Hazard Analysis and Critical Control Point Systems, 72626–72627
Procedures for the Notification of New Technology, 72627–72628

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 72751–72753

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
Higher-Level Contract Quality Requirements, 72620–72622

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Petitions:
National Vaccine Injury Compensation Program, 72680–72682

Homeland Security Department
See U.S. Citizenship and Immigration Services
See U.S. Immigration and Customs Enforcement

Interior Department
See Bureau of Safety and Environmental Enforcement
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
RULES
Import Administration; Change of Agency Name for Instruments and Apparatus for Educational and Scientific Institutions, 72570–72571
NOTICES
Antidumping and Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Stilbenic Optical Brightening Agents from Taiwan; Rescission, 72629–72630
Chlorinated Isocyanurates from Spain, 72633–72635
Polyethylene Retail Carrier Bags from Thailand; Amended Final Results Pursuant to Court Decision, 72628–72629
Request for Revocation in Part, 72630–72633
Antidumping and Countervailing Duty New Shipper Reviews; Results, Extensions, Amendments, etc.:
Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam; Rescission, 72635
Antidumping and Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Administrative Reviews; Opportunity to Request, 72636–72639
Sunset Reviews; Advance Notification, 72636
Antidumping and Countervailing Duty Sunset Reviews; Results, Amendments, Extensions, etc.:
Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 72639–72640
Countervailing Duty Investigations; Results, Extensions, Amendments, etc.:
Chlorinated Isocyanurates from the People's Republic of China, 72640
Vacancies on the U.S. Section of the U.S.–Iraq Business Dialogue, 72640–72641

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, Rulings, etc.:
Portable Electronic Communications Devices Including Mobile Phones and Components Thereof, 72712–72713

Justice Department
See Antitrust Division

Labor Department
See Wage and Hour Division
See Workers Compensation Programs Office
NOTICES
Requests for Information:
Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries, etc., 72714–72715

Land Management Bureau
NOTICES
Meetings:
Dominguez–Escalante National Conservation Area Advisory Council, 72699–72700

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation:
Higher-Level Contract Quality Requirements, 72620–72622
NOTICES
Meetings:
NASA Advisory Council, 72719
NASA Advisory Council Audit, Finance and Analysis Committee, 72718–72719
NASA Advisory Council Information Technology Infrastructure Committee, 72718

National Credit Union Administration
RULES
Credit Union Service Organizations, 72537–72550

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72749–72751

National Institute of Standards and Technology
NOTICES
Technical Investigations:
Tornado in Joplin, MO, 72641–72642

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rapid Throughput Standardized Evaluation of Transmissible Risk for Substance Use Disorder in Youth, 72682–72683
Meetings:
Center for Scientific Review, 72684
National Institute of Diabetes and Digestive and Kidney Diseases, 72683–72684
National Institute of Neurological Disorders and Stroke, 72683

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 72719–72720

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries, 72584–72585
Fisheries of the Northeastern United States:
Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Virginia, 72585–72586
Fisheries off West Coast States:
Biennial Specifications and Management Measures; Inseason Adjustments, 72586–72596
Reef Fish Fishery of the Gulf of Mexico:
2013 Accountability Measure and Closure for Hogfish in the Gulf of Mexico, 72583–72584
NOTICES
Meetings:
Pacific Fishery Management Council, 72642–72643
Taking of Marine Mammals Incidental to Specified Activities:
Bremerton Ferry Terminal Wingwall Replacement Project, 72655–72666
Mukilteo Ferry Terminal Construction Work, 72643–72655

National Park Service
PROPOSED RULES
Special Regulations, Areas of the National Park System:
Lake Meredith National Recreation Area, Bicycling, 72605–72608
NOTICES
Inventory Completions:
Bureau of Land Management, Nevada State Office, Reno, NV, 72704–72706
Canyonlands National Park, Moab, UT, 72703–72704
Colorado State University, Fort Collins, CO, 72706–72709
History Colorado, formerly Colorado Historical Society, Denver, CO, 72700–72701
Michigan State Police, Houghton Lake Post, Houghton Lake, MI, 72706
Natural Bridges National Monument, Moab, UT, 72701–72703
Repatriation of Cultural Items:
Bureau of Land Management, Alaska State Office, Anchorage, AK, 72710–72712
Denver Art Museum, Denver, CO, 72710

National Telecommunications and Information Administration
NOTICES
Meetings:
First Responder Network Authority Board, 72666–72668

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 72720

Securities and Exchange Commission
NOTICES
Applications:
Arrow Investment Advisors, LLC, et al., 72720–72729
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Stock Exchange, Inc., 72731–72737
NASDAQ Stock Market LLC, 72740–72744
National Securities Clearing Corp., 72737–72740
Options Clearing Corp., 72729–72731

Social Security Administration
RULES
Mental Disorders Body System Listings; Extension of Expiration Date, 72571–72572
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72744–72745

State Department
NOTICES
Debarments:
LeAnne Lesmeister, 72745–72746
Meetings:
International Telecommunication Advisory Committee, 72746

Substance Abuse and Mental Health Services Administration
NOTICES
Urine Drug Testing for Federal Agencies:
Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards, 72684–72686

Transportation Department
See Federal Aviation Administration

See Federal Railroad Administration
See National Highway Traffic Safety Administration
NOTICES
Applications:
Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits, 72747
Corporate Flight Management, Inc.; Commuter Authority, 72746–72747

Treasury Department
See Foreign Assets Control Office

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application to Extend/Change Nonimmigrant Status, 72686–72687

U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72687–72688

Veterans Affairs Department
RULES
Criteria for a Catastrophically Disabled Determination for Purposes of Enrollment, 72576–72579
Specially Adapted Housing Eligibility for Amyotrophic Lateral Sclerosis Beneficiaries, 72573–72576
NOTICES
Funds Availability:
Grants for Transportation of Veterans in Highly Rural Areas, 72753

Wage and Hour Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72715–72716
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Special Employment under the Fair Labor Standards Act, 72716–72717

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Division of Coal Mine Workers' Compensation, 72717–72718

Separate Parts In This Issue

Part II
Energy Department, Federal Energy Regulatory Commission, 72756–72787

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

9 CFR

Proposed Rules:

317 72597

10 CFR

430 72533

12 CFR

325 72534
712 72537
741 72537

14 CFR

39 (8 documents) 72550, 72552, 72554, 72558, 72561, 72564, 72567, 72568

Proposed Rules:

39 72598

15 CFR

301 72570
303 72570

18 CFR

40 72756

20 CFR

404 72571

32 CFR

158 72572

34 CFR

Proposed Rules:

Ch. II 72600

36 CFR

Proposed Rules:

7 72605

38 CFR

3 72573
17 72576

40 CFR

52 72579
62 72581

Proposed Rules:

52 72608
62 (2 documents) 72609, 72611
194 72612

48 CFR

Proposed Rules:

44 72620
46 72620
52 72620

50 CFR

622 72583
635 72584
648 72585
660 72586

Proposed Rules:

17 72622

Rules and Regulations

Federal Register

Vol. 78, No. 232

Tuesday, December 3, 2013

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

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2013–BT–NOA–0047]

RIN 1904–AD08

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products

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

ACTION: Final rule; technical amendment.

SUMMARY: This final rule incorporates certain changes to the Code of Federal Regulations addressed in a final rule published on October 23, 2013. That final rule adopted changes to definitions and energy conservation standards enacted through the American Energy Manufacturing Technical Corrections Act, among which were a revised definition and revised energy conservation standards for small duct high velocity central air conditioners and heat pumps. However, the final rule erroneously omitted the changes to the regulatory text. This final rule incorporates those changes.

DATES: *Effective Date:* December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. Email: *Lucas.Adin;@ee.doe.gov.*

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

I. Background

The American Energy Manufacturing Technical Corrections Act (AEMTCA; H.R. 6582), Pub. L. 112–210, was signed into law on December 18, 2012. Among its provisions are amendments to Part B [1] of Title III of the Energy Policy and Conservation Act of 1975 (EPCA or ''the Act'') (42 U.S.C. 6291–6309, as codified), which provides for an energy conservation program for consumer products other than automobiles. Section 5 of the AEMTCA added to EPCA a definition and standards specifically for small duct high velocity systems (SDHVs). (42 U.S.C. 6295(d)(4)) The new EPCA definition (42 U.S.C. 6295(d)(4)(A)(i)) repeats verbatim the wording of DOE's definition of SDHV, with one minor editorial change. In a final rule published on October 23, 2013, DOE explained that it was incorporating this change into its definition of SDHV in 10 CFR 430.2. 78 FR 62988, 62989–62990. The AEMTCA amendments also established that SDHV units manufactured on or after January 23, 2006 and before January 1, 2015, must perform at or above 11 SEER and 6.8 HSP and SDHV units manufactured on January 1, 2015, and thereafter must perform at or above 12 SEER and 7.2 HSP. In the October 23, 2013 rule, DOE explained that it was replacing its current standards for SDHVs with these new EPCA standards. However, the final rule erroneously omitted the amended regulatory text for the SDHV definition and standards.

II. Summary of Today's Action

By today's action, DOE is including in the Code of Federal Regulations (CFR) the new and modified standards and definitions applicable to SDHVs prescribed by the AEMTCA. This is a purely technical amendment, and at this time DOE is not exercising any of the authority that Congress has provided in the AEMTCA for the Secretary of Energy to revise definitions and energy conservation standards.

III. Final Action

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. DOE is merely placing in the CFR text prescribed by the Congress in the AEMTCA and making other limited revisions to its regulations as necessitated by this text. DOE is not exercising any of the discretionary authority that the Congress has provided to the Secretary of Energy in the AEMTCA. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the **Federal Register**.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Today's final rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563. Accordingly, today's action was neither subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the analytical requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on November 25, 2013.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE hereby amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.2 is amended by revising the definition of ''Small duct, high velocity system'' to read as follows:

§ 430.2 Definitions.

* * * * *

Small duct, high velocity system means a heating and cooling product that contains a blower and indoor coil combination that—

(1) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton of cooling; and

(2) When applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

* * * * *

§ 430.32 [Amended]

■ 3. Section 430.32 is amended:

■ a. In the table for paragraph (c)(2):

■ 1. First column, by removing the footnote designation from rows (v)(A) and (v)(B) and adding it after ''class'' in the heading of the first column;

■ 2. Row (vi) in the second column, by removing ''13'' and adding in its place, ''11'', and in the third column by removing ''7.7'' and adding in its place, ''6.8'';

■ b. In the table for paragraph (c)(3), row (v) in the second column, by removing ''13'' and adding in its place, ''12'', and in the third column by removing ''7.7'' and adding in its place, ''7.2''.

[FR Doc. 2013–28768 Filed 12–2–13; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Policy Statement on the Principles for Development and Distribution of Annual Stress Test Scenarios

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final guidance.

SUMMARY: Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Section 165(i)'') requires the Federal Deposit Insurance Corporation (the ''FDIC'' or ''Corporation'') to issue regulations that mandate FDIC-insured state nonmember banks and FDIC-insured state-chartered savings associations with total consolidated assets of more than $10 billion (''covered banks'') to conduct annual stress tests, report the results of such stress tests to the Corporation and the Board of Governors of the Federal Reserve System (''Board of Governors''), and publish a summary of the results of the stress tests. On October 15, 2012, the FDIC published in the **Federal Register** a final rule implementing the requirements of Section 165(i) (the ''Stress Test Rule''). Under the Stress Test Rule covered banks are required to conduct annual stress tests using a minimum of three stress test scenarios (baseline, adverse, and severely adverse) provided by the FDIC. On November 20, 2012, the FDIC published in the **Federal Register** interim guidance setting forth the general processes and factors to be used by the FDIC in developing and distributing the stress test scenarios. The FDIC is now adopting the interim guidance as final without change, except for two technical corrections.

DATES: *Effective Date:* The final guidance is effective January 2, 2014.

FOR FURTHER INFORMATION CONTACT: Ryan Sheller, Senior Large Financial Institutions Specialist, (202) 412–4861, Division of Risk Management and Supervision; Rachel Jones, Attorney, (202) 898–6858, or Grace Pyun, Attorney, (202) 898–3609, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 was enacted on July 21, 2010 (the ''Dodd-Frank Act'').[1] Section 165(i) of the Dodd-Frank Act requires the FDIC, as a Federal primary financial regulatory agency, to issue regulations that mandate covered banks to conduct annual stress tests. On October 15, 2012, the FDIC issued the Stress Test Rule, which implemented the requirements of Section 165(i) and set out definitions and rules for scope of application, scenarios, reporting, and disclosure.[2] Under the Stress Test Rule, covered banks are required to conduct annual stress tests based on the annual stress test cycle set out in Table 1.

PROCESS OVERVIEW OF ANNUAL STRESS TEST

[Using data as of September 30th]

Step	Timeframe for over $50 billion covered banks	Timeframe for $10 billion to $50 billion covered banks
1. FDIC provides covered banks with scenarios for annual stress tests.	No later than November 15th	No later than November 15th.
2. Covered banks submit required regulatory reports to the FDIC on their stress tests.	No later than January 5th	No later than March 31st.[3]
3. Covered banks make required public disclosures	Between March 15th and March 31st	Between June 15th and June 30th.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 77 FR 62417 (Oct. 15, 2012).

[3] A covered bank that is a subsidiary of a bank holding company or a savings and loan holding company may elect to report and issue its required public disclosure on its parent bank holding company's or savings and loan holding company's timeline.

A key component of the annual stress test is the development of the stress test scenarios that are provided to covered banks on or before November 15th of each year by the FDIC. Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered bank that the FDIC annually determines are appropriate for use in the stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios. Each scenario includes the values of the variables specified for each quarter over the stress test horizon. The variables specified for each scenario generally address economic activity, asset prices, and other measures of financial market conditions for the United States and key foreign countries. The FDIC annually will determine scenarios that are appropriate for use for each annual stress test. The timeline in Table 1 provides that the FDIC will distribute stress test scenarios to covered banks no later than November 15th of each year.

II. Summary of the Interim Guidance and Comments Received

A. Summary of the Interim Guidance

The FDIC published interim guidance in the **Federal Register** on November 20, 2012, that articulated the principles the FDIC will apply to develop and distribute the stress test scenarios for covered banks as required by the Stress Test Rule.[4] The interim guidance was effective immediately and, to the extent practicable, to the 2012 annual stress test cycle. The FDIC also solicited comment on all aspects of the interim guidance for purposes of finalizing the guidance and the development and distribution of future stress test scenarios.

B. Summary of Comments Received

The FDIC received two comments on the interim guidance. One comment from an individual was not in favor of the Stress Test Rule and recommended that the FDIC reconsider finalizing the interim guidance. The FDIC believes the interim guidance gives covered banks and the market the general processes and factors used for scenario development. Furthermore, annual stress tests are necessary because they allow covered banks and the FDIC to determine whether those banks have capital sufficient to absorb losses that could result from adverse economic conditions. The FDIC views stress test results as an important source of forward-looking information that can help identify downside risks and assess the potential impact of adverse outcomes on capital adequacy. Accordingly, the FDIC has decided to finalize this interim guidance.

The other comment from a public interest group supported the interim guidance and further recommended that the FDIC include mark-to-market losses and short-term funding losses in stress test scenarios. To that end, the commenter recommended expanding the scenarios to state that if mark-to-market losses occur in assets that are funded using short-term borrowing (such as asset back commercial paper or repurchase agreements), the covered bank must explain what steps (for example additional borrowing or asset sales) it would undergo to replace a specified percentage of that funding. The FDIC agrees that covered banks should consider the subsequent liquidity effects stemming from the impact of the stress test scenarios; however, this scenario guidance is developed for covered banks under the Stress Test Rule. The Stress Test Rule focuses on how well covered banks' capital levels withstand hypothetical economic scenarios so that covered banks' management can consider the results for conducting capital planning, assessing capital adequacy, and evaluating risk management practices. The Stress Test Rule does not specifically require covered organizations to detail how they would replace short-term funding losses. Liquidity stress testing is outside the scope of this guidance, however, additional guidance regarding such liquidity stress testing may be considered in the future.

The commenter also recommended that the FDIC disclose additional information about the methods and data used in the stress tests. The commenter requested that the FDIC disclose the specification, statistical fit, or other out-of-sample forecasting properties of the risk models that are used for developing the stress test scenarios. The FDIC views this guidance as providing useful information to covered banks as to how the FDIC develops the economic scenarios including the methods and data used for stress testing while maintaining the flexibility to establish the underlying methods and data properties of risk models for evolving conditions that affect the U.S. economy or the financial condition of a covered bank. Accordingly, the Corporation does not believe that providing detailed scenario specifications would contribute to the broader goal of informing covered banks on the development of economic scenarios.

After reviewing and carefully considering the comments received on the interim guidance, the FDIC is finalizing the guidance without change, except for two technical corrections.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the FDIC has reviewed this final guidance. The FDIC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The FDIC has conducted a PRA analysis on all related reporting, recordkeeping and disclosure requirements in the Stress Test Rule and submitted them to OMB for review and approval. The request, which has been assigned OMB Control No. 3064–0187, has been approved. No new collection of information pursuant to the PRA is contained in this final guidance. Additionally, the FDIC did not receive any comment on the PRA analysis contained in the interim guidance.

IV. Principles for Development and Distribution of Annual Stress Test Scenarios

The text of the final guidance is as follows.

Principles for Development and Distribution of Stress Test Scenarios

I. Introduction

Section 165(i)(2) of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 requires certain financial companies, including FDIC-insured state nonmember banks and FDIC-insured state-chartered savings associations with total consolidated assets of more than $10 billion (''covered banks''), to conduct annual stress tests. The Federal Deposit Insurance Corporation (''FDIC'' or ''Corporation'') published in the **Federal Register** on October 15, 2012, a final rule (''Stress Test Rule'') implementing the requirements and setting out definitions and rules for scope of application, scenarios, reporting, and disclosure.[1] Under the Stress Test Rule, each year the FDIC will distribute stress test scenarios to covered banks. This document articulates the principles that the FDIC will apply to develop and distribute those scenarios for covered banks.

II. Stress Tests

As defined by the Stress Test Rule, a stress test means ''the process to assess

[4] 77 FR 69553 (Nov. 20, 2012).

[1] 77 FR 62417 (Oct. 15, 2012).

the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered bank over the planning horizon, taking into account the current condition of the covered bank and the covered bank's risks, exposures, strategies, and activities.'' [2] Stress tests help covered banks and the FDIC determine whether those banks have capital sufficient to absorb losses that could result from adverse economic conditions. The FDIC views stress test results as one source of forward-looking information that can help identify downside risks and assess the potential impact of adverse outcomes on capital adequacy. Stress tests are not the only tool the FDIC uses for these purposes; a complete assessment of a covered bank's capital position typically includes review of its capital planning processes, the governance concerning those processes, and the adequacy of capital under established regulatory capital measures. The FDIC expects the board of directors and senior management of each covered bank to consider the results of the annual stress test when conducting capital planning, assessing capital adequacy, and evaluating risk management practices.[3] The FDIC also may use stress test results to determine whether additional analytical techniques and exercises are appropriate for a covered bank to employ in identifying, measuring, and monitoring risks to the financial soundness of the covered bank.

Under the Stress Test Rule, each covered bank is required to conduct an annual stress test using its financial data as of September 30th of each year, unless the FDIC requires a different ''as of'' date for any or all categories of financial data.[4] The stress test must assess the potential impact of specific scenarios on the regulatory capital of the covered bank and on certain related items over a forward-looking planning horizon, taking into account all relevant exposures and activities.[5] Under the Stress Test Rule, the planning horizon is at least nine quarters, consisting of the fourth quarter of the current calendar year plus all four quarters of each of the two subsequent calendar years.

III. Scenarios

Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered bank that the Corporation annually determines are appropriate for use in the stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.[6] The FDIC annually will determine scenarios that are appropriate for use under the Stress Test Rule. In conducting the stress test under the Stress Test Rule, each covered bank must use the scenarios provided by the FDIC.

Each scenario includes the values of the variables specified for each quarter over the stress test horizon. The FDIC expects that covered banks may not need to use all of the variables provided and may need to estimate relationships to identify other variables, such as those reflecting local economic conditions, from the values the FDIC provides. The FDIC will review the appropriateness of estimation processes and resulting estimates, or other modifications of variables, through its ongoing supervisory processes.

The variables specified for each scenario generally address economic activity, asset prices, and other measures of financial market conditions for the United States and key foreign countries. Variables that describe economic activity likely include, but are not limited to, the growth rate of gross domestic product, the unemployment rate, and the inflation rate. The FDIC anticipates that the path of the unemployment rate in particular will be a key variable indicating the severity of economic stress, as this variable provides a simple and widely noted gauge of the state of the U.S. economy. This point is discussed further in this statement in connection with severely adverse scenarios.

Other variables may represent asset prices and financial market conditions, including interest rates. The FDIC expects to specify scenarios using a standard core set of variables, although variables may be added or deleted as the U.S. and global economic environment evolves. The FDIC will attempt to minimize additions, redefinitions, or re-specifications of the stress test variables from year to year, as the use of such new or different variables may potentially require covered banks to modify their testing systems.

The scenarios provided by the FDIC reflect at least three sets of economic and financial conditions, described in the rule as baseline, adverse, and severely adverse. The baseline broadly corresponds to the set of conditions expected to prevail over the term of the stress tests. The adverse and severely adverse scenarios introduce hypothetical stress conditions intended to test the safety and soundness of covered banks as well as their capital planning processes. The aim is to assess the covered banks' ability to identify and measure the risks they face under adverse conditions, and to ensure that appropriate amounts of capital exist to support those risks. The FDIC will evaluate both the adequacy of the projections and the processes used in the stress test. The FDIC expects covered banks to be able to maintain ready access to funding, continue operations, meet obligations to creditors and counterparties, and continue to serve as credit intermediaries under conditions that are significantly more adverse than expected.

The *baseline* scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered bank, and that reflect the consensus views of the economic and financial outlook.[7] These views are based on information obtained from government agencies, other public sector organizations, and private sector forecasters as close to the date of the annual stress test as possible. The baseline may be based on one or more of the ''consensus'' forecasts produced by various organizations, although the FDIC may choose to depart from the consensus if necessary to provide a more appropriate baseline for the stress tests.

The *adverse* scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered bank that are more adverse than those associated with the baseline scenario and may include trading or other additional components.[8] The adverse scenario may also be used to investigate other risks, such as including operational risks that the FDIC believes should be better understood or more closely monitored.

The *severely* adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered bank and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.[9] Three examples of severe recessions from recent U.S. experience may illustrate the anticipated depth of the severely adverse scenario as it relates to the unemployment rate:

- The 1973–75 recession, during which the unemployment rate increased 4.1 percentage points, from 4.9 percent in third quarter 1973 to 9.0 percent in second quarter 1975 (one quarter after the recession ended).

[2] 12 CFR 325.202(l).

[3] *Id.* at 325.205(b)(3).

[4] *Id.* at 325.201(c)(2) and 325.203(a).

[5] *Id.* at 325.205(a).

[6] *Id.* at 325.202(i).

[7] *Id.* at 325.202(c).

[8] *Id.* at 325.202(a).

[9] *Id.* at 325.202(j).

• The back-to-back recessions in 1980 and 1981–82, during which the unemployment rate increased 4.7 percentage points, from 6.1 percent in fourth quarter 1979 to 10.8 percent in fourth quarter 1982 (the last quarter of the recession).

• The 2007–09 recession, during which the unemployment rate increased 5.3 percentage points, from 4.7 percent in third quarter 2007 to 10.0 percent in fourth quarter 2009 (two quarters after the recession ended).

Other variables under the adverse and severely adverse scenarios would be expected to follow paths consistent with the depth and duration of previous recessions and with models of macroeconomic activity. The severely adverse scenario also may reflect other risks that are especially salient and that might not be captured by past recessions, including elevated levels of systemic risk.

The scenarios distributed by the FDIC for the stress tests will cover at least nine quarters. In addition, the FDIC will generally publish scenarios that cover one year beyond the planning horizon of the stress test, to allow for the estimation of loan losses for the year following the stress planning horizon; this additional specification allows covered banks to determine adequate levels of loan loss reserves.

The FDIC believes that as a general matter all covered banks should use the same set of scenarios and planning horizon so that the FDIC can better compare results across covered banks. To that end, the FDIC intends to provide one set of scenarios for use by all covered banks. However, the FDIC believes there may be circumstances that would warrant the use of different or additional scenarios or a planning horizon of more than nine quarters. Thus, under the Stress Test Rule, the FDIC reserves the authority to require a covered bank to use different or additional scenarios and/or planning horizons the Corporation may deem appropriate.[10] For example, a covered bank may conduct business activities or have risk exposures that would encounter stress under conditions that differ materially from those that would generate stress for other banks. The FDIC expects such situations to be rare and anticipates making every effort to distribute the same scenarios to all covered banks.

In addition to the minimum three scenarios, the FDIC may require a covered bank with significant trading activities to include factors related to trading and counterparty risk in its stress test. Typically, these factors might include additional shocks to specific market prices, interest rates, rate spreads, or other key market variables consistent with historical or hypothetical adverse market events.

[10] *Id.* at 325.201(c).

IV. Development and Distribution

As one part of the process of developing scenarios, the FDIC will gather information from outside entities and develop themes for the stress test scenarios, including the identification of potentially material vulnerabilities or salient risks to the financial system, and consider potential paths for individual variables. The outside entities may include academic experts, staffs of international organizations, foreign supervisors, financial institutions that regularly provide forecasts, and other private sector risk analysts that regularly conduct stress tests based on U.S. and global economic and financial scenarios. The FDIC will use the information gathered in this manner to inform its consideration of potential risks and scenarios.

The Office of the Comptroller of the Currency (''OCC''), the Board of Governors of the Federal Reserve System (''Board''), and the FDIC (collectively, the ''Agencies'') expect to consult closely to develop scenarios for stress testing. Absent specific supervisory concerns, the FDIC anticipates that the annual stress test scenarios distributed by the FDIC will be the same as or nearly identical to the scenarios developed by the Board for the supervisory stress tests conducted by the Board under Section 165(i)(1). This would mean the same economic and financial variables following the same paths as used in the scenarios for the Board's supervisory stress tests.

Although the Agencies generally expect to consult closely on scenario development, they may have different views of risks that should be reflected in the stress test scenarios used by covered banks for the annual stress test. The FDIC may distribute scenarios to covered banks that differ in certain respects from those distributed by the OCC and the Board if necessary to better reflect specific FDIC concerns. The FDIC expects such situations to be extremely rare, however, and anticipates making every effort to avoid differences in the scenarios required by each agency.

The FDIC anticipates that the stress test scenarios will be revised annually as appropriate to ensure that each scenario remains relevant under prevailing economic and industry conditions. These yearly revisions will enable the scenarios to capture evolving risks and vulnerabilities. The need to ensure that scenarios do not become outdated because of economic and financial developments makes a lengthy process of review and comment concerning scenarios prior to distribution each year impractical. However, the process of consultation with the Board and the OCC, as well as the ongoing interaction of FDIC staff with public and private sector experts to obtain views on salient risks and to obtain suggestions for the behavior of key economic variables, should ensure that the stress conditions reflected in the scenarios are well suited to their purpose.

The scenario development process culminates with the distribution of the scenarios to all covered banks no later than November 15th of each year. The scenario descriptions provided to covered banks will include values for economic and financial variables depicting the paths those variables follow under the scenarios. The FDIC believes that distribution of the scenarios no later than November 15th aligns with similar processes at the OCC and the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 25th day of November, 2013.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–28608 Filed 12–2–13; 8:45 am]

BILLING CODE 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 712 and 741

RIN 3133–AD93

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to amend its credit union service organization (CUSO) regulation to increase transparency and address certain safety and soundness concerns. The final rule expands the requirements of the CUSO regulation that apply to federally insured, state-chartered credit unions (FISCUs) to address accounting, financial statements, and audits. The final rule also includes limits on the ability of ''less than adequately capitalized'' FISCUs to recapitalize their CUSOs. In addition, it adds several new requirements that apply to both federal credit unions (FCUs) and FISCUs. Specifically, all CUSOs are required to annually provide basic profile

information to NCUA and the appropriate state supervisory authority (SSA). CUSOs engaging in certain complex or high-risk activities are required to additionally report more detailed information, including audited financial statements and general customer information. The final rule also requires all subsidiary CUSOs to follow applicable laws and regulations.

DATES: This rule is effective June 30, 2014. CUSOs will begin submitting reports to NCUA under new § 712.3(d)(4) when the agency's reporting system is fully operational, which will be by December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, Virginia 22314–3428, telephone (703) 518–6540, or Lisa Dolin, Program Officer, Office of Examination and Insurance, at 1775 Duke Street, Alexandria, Virginia 22314–3428, telephone (703) 518–6630.

SUPPLEMENTARY INFORMATION:

I. Background
A. Why is NCUA adopting this final rule?
B. What changes were released for comment in the 2011 proposed rule?
II. Summary of Public Comments
A. What were the general comments supporting the proposed rule?
B. What were the general comments opposing the proposed rule?
III. Final Rule
A. What changes does this rule make?
B. How does this rule impact credit unions?
C. What are the key provisions in the final rule?
IV. Draft Reporting Form
V. Regulatory Procedures

I. Background

A. Why is NCUA adopting this final rule?

CUSOs provide significant value to the credit union industry by acting as a collaborative means to share risk, manage costs, and deliver services to credit union members. With their unique collaborative business model, CUSOs foster cooperation and shared innovation for credit unions to achieve economies of scale, retain expertise, and better serve their members. Thus, the NCUA Board (the Board) recognizes that CUSOs benefit both credit unions and credit union members. Nevertheless, the Board believes the ability to accurately inventory CUSOs and evaluate their financial and operational condition is imperative to mitigating risks to the National Credit Union Share Insurance Fund (NCUSIF). The Board is adopting this rule to improve the quality of information about CUSOs and the nature of their activities, in order to identify risks to the credit union industry and protect the NCUSIF.

In 2008, the Board issued a final rule, which, among other things, made certain provisions of the CUSO regulation applicable to FISCUs.[1] Specifically, the final rule requires FISCUs to maintain separate corporate identities from their CUSOs. It also requires FISCUs to enter into agreements with CUSOs stating that the CUSOs would provide open access to their books and records to NCUA and the applicable SSA.[2] Those provisions had previously only applied to FCUs, but the Board believed that, to protect the NCUSIF, it was necessary to apply those requirements to FISCUs as well.

Since the promulgation of the 2008 rule, the Board has determined that additional protections in the CUSO rule addressing investments, accounting, financial statements, and audits should similarly be extended to FISCUs in order to protect credit unions and the NCUSIF. Additionally, since 2008, the agency has continued to investigate ways to improve the quality of information about credit unions' use of CUSOs and the services provided by CUSOs. The Board does not believe that the information NCUA currently maintains on CUSOs is sufficient to evaluate CUSOs and their potential impact to the NCUSIF. For example, at this time, NCUA cannot fully determine which CUSOs maintain relationships with which credit unions, the financial condition of CUSOs, the full range of services offered by CUSOs, or even the total number of CUSOs that presently exist. The current information is incomplete, primarily because the agency is collecting information on a CUSO from the CUSO's credit union clients rather than directly from the CUSO itself. Further, directly capturing CUSO information reduces the regulatory burden to FICUs in reporting this information. The Board believes that, in order to identify emergent risks posed by CUSOs and to protect the NCUSIF, it is imperative to have complete and accurate financial and operational information about CUSOs and the nature of their services.

As a result, the Board is issuing this final rule, which makes additional parts of the CUSO rule applicable to all federally insured credit unions (FICUs). The final rule also requires CUSOs to register basic information (and, in some cases, to file more detailed reports) directly with NCUA and the appropriate SSA, if applicable. Additionally, it also codifies existing agency policy regarding subsidiary CUSOs. Finally, the rule makes technical changes to reference federally insured credit unions and define ''CUSO,'' and conforming amendments to § 741.222 to reflect the changes affecting FISCUs in this final rule.

B. What changes were released for comment in the 2011 proposed rule?

On July 21, 2011, the Board issued a proposed rule to amend part 712 of NCUA's regulations to increase transparency and address certain safety and soundness concerns regarding CUSOs.[3] The proposed rule applied several existing provisions in the CUSO rule to FISCUs. First, the proposal limited a ''less than adequately capitalized'' FISCU's aggregate cash outlay to a CUSO, measured on a cumulative basis, to the permissible investment limit in the state in which the FISCU is chartered. These proposed changes are similar to the requirements in § 712.2(d)(2) for FCUs. They were intended to address the Board's concern that less than adequately capitalized FISCUs are continuing to invest money in failing CUSOs, thereby posing serious risks to their members and the NCUSIF. Second, the proposed rule applied existing provisions related to accounting, financial statements, and audits to FISCUs. These particular provisions already apply to FCUs under § 712.3(d).

The proposed rule also added two new requirements to apply to all FICUs. Specifically, the proposed rule required FICUs to include, in their agreements with CUSOs, a requirement that a CUSO submit a financial report directly to NCUA or, in the case of a CUSO invested in by a FISCU, NCUA and the appropriate SSA. Under the proposal, these reports would be required to be submitted at least annually. (Proposed § 712.3(d)(4)). The proposed reporting requirement was intended to protect the NCUSIF by improving the quality of available information about CUSOs so that NCUA could better evaluate and identify emergent risks posed by CUSOs. Additionally, the proposed rule prohibited FICUs from investing in a CUSO unless that CUSO's subsidiaries also comply with all of the requirements of the CUSO rule and/or laws and rules of the state in which the credit union is chartered, as applicable. (Proposed § 712.11).

II. Summary of Public Comments

The public comment period for the proposed rule ended on September 26, 2011. NCUA received 290 comments on

[1] 73 FR 79312 (Dec. 29, 2008).

[2] *Id.*

[3] 76 FR 44866 (July 27, 2011).

the proposed rule: 64 from CUSOs, 54 from FCUs, 85 from state-chartered credit unions, 1 from a corporate credit union, 7 from trade associations (1 representing banks, 2 representing credit unions, 1 representing CUSOs, 1 representing state credit union regulators, 1 representing cooperatives, and 1 assisting credit unions in investments and insurance), 21 from state credit union leagues, 2 from non-profit policy or research organizations, 2 from law firms or attorneys, and 54 from individuals.

Of the 290 comments received, 85 were duplicative in some manner, for example, identical ''form'' letters from different individual commenters, identical letters from the same person representing different organizations, identical letters from different people representing the same organization, or different letters from the same person representing the same organization. Additionally, the majority of the comments exhibited notable similarities. For example, a significant number of comments contained at least some duplicative or ''form'' language, presented similar arguments or talking points, cited similar data or statistics, or posed similar questions for clarification.

Most of the commenters expressed opposition to, or raised concerns about, one or more aspects of the proposed rule. A few commenters were supportive of the proposal overall.

A. What were the general comments supporting the proposed rule?

The commenters who supported the proposal were generally in favor of subjecting CUSO activities to greater regulatory scrutiny. Several supporters of the rule, however, argued that the proposal did not go far enough and that additional oversight is necessary in order to protect consumers and to mitigate the potential risk to the NCUSIF.

Additionally, a number of commenters opposed the proposal in general, but expressed support for certain aspects of it. In particular, several commenters supported the proposed recapitalization limits for less than adequately capitalized FISCUs, noting that this particular provision is consistent with safety and soundness. Several commenters also supported applying the same CUSO rules to FISCUs and FCUs. Several opponents of the rule in general also expressed support for greater transparency between CUSOs and credit unions. These commenters suggested, however, that instead of being required to report financial information directly to NCUA, CUSOs should improve and enhance the information shared with participating credit unions.

B. What were the general comments opposing the proposed rule?

Commenters expressing opposition to the rule focused primarily on the proposed financial reporting requirement. Most commenters raised concerns about NCUA's authority to impose the proposed reporting requirement. They noted that NCUA does not have statutory authority to directly regulate CUSOs, and questioned whether NCUA's general safety and soundness and examination authority under the Federal Credit Union Act (FCU Act) is sufficient to justify the increased regulatory oversight of CUSOs. Nearly all commenters indicated they do not believe CUSOs pose a true systemic risk to the NCUSIF and argued that additional regulation by NCUA is unnecessary. Commenters contended that NCUA's current authority over CUSOs is sufficient, noting that problems with CUSOs are few, and that these problem cases can be addressed by improving NCUA's supervisory oversight of credit unions and strengthening due diligence requirements. Most commenters suggested that, if the Board adopts a final rule, the Board should take a more targeted regulatory approach by tailoring the rule to identified problem areas. They argued that the proposal is misguided in treating all CUSOs the same, regardless of the CUSO's line of business.

In addition, a substantial number of commenters argued that the proposed rule would unnecessarily and unfairly increase regulatory burden and compliance costs to both credit unions and their affiliated CUSOs, stifling innovation and placing them at a competitive disadvantage to their non-CUSO competitors. Commenters also expressed concern that certain requirements under the proposal would be a condition of NCUSIF coverage.

NCUA has carefully reviewed and considered all the comment letters it received in response to the proposal. Recognizing the significant concerns raised by commenters, the Board has made substantial adjustments to the final rule. The key provisions of the final rule, along with an analysis of the pertinent public comments, are discussed in greater detail below.

III. Final Rule

A. What changes does this rule make?

Under this final rule, several provisions of the current CUSO regulation which previously applied only to FCUs will now apply to FISCUs as well. The rule also adds a new requirement for all FICUs to require their CUSOs to register basic information (and, in some cases, to file more detailed reports) directly with NCUA and, if applicable, the appropriate SSA. Finally, the final rule clarifies the regulation's applicability to subsidiary CUSOs by codifying existing policy in the regulatory text.

B. How does this rule impact credit unions?

FCUs and FISCUs making loans to and investments in CUSOs are impacted by this final rule. The Board emphasizes, however, that the final rule is significantly more limited in application than the proposed rule, targeted mainly to CUSOs engaged in more complex or high-risk activities, such as credit and lending, information technology (IT), and custody, safekeeping, and investment management services for credit unions.

C. What are the key provisions in the final rule?

A detailed discussion of the final rule's key provisions follows.

Applicability of Certain CUSO Rule Provisions to FISCUs

Section 120 of the FCU Act authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[4] Further, Title II of the FCU Act provides that the Board may insure members' accounts and administer the NCUSIF, and may prescribe regulations for FICUs that are necessary to carry out that purpose.[5] Subpart B of Part 741 addresses NCUA regulations that FISCUs must follow to obtain and maintain federal share insurance from NCUA. Currently, only two provisions of the CUSO rule apply to FISCUs: (1) § 712.4, which addresses corporate separateness, and (2) § 712.3(d)(3), which provides NCUA and the applicable SSA with access to CUSO books and records. The Board believes certain requirements should be consistent among all FICUs to minimize risk to the NCUSIF. The risk to the NCUSIF from CUSO operations is the same, regardless of the charter type of the credit union. However, individual state regulatory requirements for CUSO activities may vary from NCUA's regulations. The FCU Act limits FCU loans to CUSOs to a maximum of 1% of paid-in and unimpaired capital and

[4] 12 U.S.C. 1766.

[5] 12 U.S.C. 1781(b)(9), 1789(11).

surplus.[6] The FCU Act also restricts FCU investments in CUSOs to the same amount.[7] Under certain state laws, however, FISCUs are permitted to invest or loan to CUSOs in significantly higher amounts. For example, some state limits are as high as 25% or they are unspecified.[8] Accordingly, for uniformity among all FICUs and to minimize risk to the NCUSIF, this final rule amends § 741.222 to specify that current § 712.2(d)(2), which imposes certain recapitalization restrictions, and § 712.3(d), which addresses CUSO accounting, audits, and financial statements, also apply to FISCUs.

Limits on Recapitalization of Insolvent CUSOs—Applicability of § 712.2(d)(2) to FISCUs

In 2008, the Board amended the CUSO regulation to require less than adequately capitalized FCUs to obtain written approval from the appropriate regional director before making an investment in a CUSO that would result in an aggregate cash outlay, measured on a cumulative basis, in an amount in excess of 1% of the credit union's paid-in and unimpaired capital and surplus.[9] The Board promulgated the amendment because, as it noted in the 2008 proposed rule, it was aware of credit unions that had experienced losses because they chose to recapitalize insolvent CUSOs.[10] The 2008 amendment was intended to prevent an FCU from investing, on an aggregate basis, more than 1% of its capital in a CUSO that has essentially become unsustainable.

This final rule adds a similar requirement for FISCUs except where state law specifies a higher investment limit in CUSOs. The provision will apply in circumstances where a FISCU is already less than adequately capitalized or where the recapitalization of a CUSO will render the FISCU less than adequately capitalized for Prompt Corrective Action (PCA) purposes.[11] Under the rule, if a FISCU is less than adequately capitalized or the investment will result in the FISCU being less than adequately capitalized, the FISCU must obtain written approval from the appropriate SSA before making an investment in a CUSO that will result in an aggregate cash outlay, measured on a cumulative basis, that exceeds the investment limit in the state in which the FISCU is chartered. If the applicable state does not regulate the investment limit for FISCUs, however, the FISCU must obtain regulatory approval from the appropriate SSA before making an investment in a CUSO that will result in an aggregate cash outlay, measured on a cumulative basis, in excess of 1% of the FISCU's paid-in and unimpaired capital and surplus.

In addition to submitting a request to the appropriate SSA, a less than adequately capitalized FISCU, or a FISCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, must also submit its request to the appropriate NCUA regional office. While the SSA will decide such requests, the Board believes it is important that NCUA's regional offices also be made aware of these requests so NCUA can provide appropriate input to the SSAs. The Board notes that this amendment does not require a less than adequately capitalized FISCU, or a FISCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, to divest of a CUSO. Rather, it may maintain its existing investment, but it cannot make additional investments in any CUSO without prior written approval from the appropriate SSA.

Several commenters generally supported applying the same CUSO rules to FISCUs and FCUs. A number of commenters also expressed specific support for this provision, noting that imposing investment limits for less than adequately capitalized FISCUs is consistent with safety and soundness. Some commenters, however, disagreed with the cumulative calculation for the aggregate cash outlay or expressed confusion regarding its application. In particular, several commenters asked for clarification regarding how far back in time the cumulative calculation must go. The Board adopts this provision substantially as proposed, but, for clarity, the final rule limits the cumulative calculation to the last 7 years. This time period corresponds with various other accounting time limits, such as the length of time bankruptcies are reported, and record retention timeframes for audit and tax purposes. Parallel amendments are made in the final rule to limit the cumulative calculation to 7 years for both FCUs and FISCUs.

CUSO Accounting, Audits, and Financial Statements—§ 712.3(d)

Under the final rule, provisions in the current CUSO rule addressing CUSO accounting, audits, and financial statements which currently only apply to FCUs also now apply to all FICUs. As discussed above, in 2008, the Board amended § 712.3(d) to require FISCUs to comply with the subsections addressing access to a CUSO's books and records.[12] This final rule applies all of the subsections of § 712.3(d) to FISCUs. Under these additional subsections, a credit union's agreement with a CUSO must require the CUSO to account for all of its transactions according to Generally Accepted Accounting Principles (GAAP), prepare quarterly financial statements, and obtain an annual audit of its financial statements by a licensed certified public accountant.

As noted above, a number of commenters supported applying the same rules to FISCUs and FCUs. A few commenters, however, expressed concern that the proposal to apply the financial statement and audit provision, § 712.3(d)(2), to FISCUs would result in higher compliance costs to the credit union and CUSO where a CUSO is wholly owned and the CUSO's financials are consolidated into the investing credit union's financial statements. The Board notes that under this final rule, as well as under the existing rule for FCUs, a wholly owned CUSO would not be required to obtain a separate annual financial statement audit if the CUSO is included in the annual consolidated financial statement audit of its investing credit union. As such, the Board does not anticipate that the extension of § 712.3(d)(2) to FISCUs will impose an unreasonable compliance cost where a CUSO is wholly owned. The Board continues to believe it is necessary to extend these requirements to FISCUs to ensure NCUA will be able to fully review the financial condition of CUSOs and evaluate the risks posed to FISCUs and ultimately to the NCUSIF. Accordingly, the section is adopted as proposed.

Reporting Requirement—§ 712.3(d)(4)

The proposed rule added a new provision to require a FICU's agreement with a CUSO to require it to file financial reports with NCUA and, as applicable, the appropriate SSA (proposed § 712.3(d)(4)). The proposal was intended to allow NCUA to collect uniform information directly from all CUSOs, in order for the agency to

[6] 12 U.S.C. 1757(5)(D).

[7] 12 U.S.C. 1757(7)(I).

[8] *See, e.g.,* N.D. Admin. Code 13–03–23–06 (10% of equity); Ind. Code § 28–7–1–9 (10% of capital, surplus, and unimpaired shares, or higher with prior written approval); Me. Rev. Stat. Ann. tit. 9–B, § 864 (10% of share capital and surplus); Idaho Code Ann. § 26–2146 (10% of paid-in shares and deposits); Mich. Comp. Laws Ann. § 490.401 (12% of assets with prior approval); N.C. Gen. Stat. § 54–109.82 (25% of allocations to the reserve fund); Mont. Code Ann. § 32–3–701 (no limit specified).

[9] 73 FR 79312 (Dec. 29, 2008).

[10] 73 FR 23982, 23984 (May 1, 2008).

[11] 12 CFR part 702.

[12] 73 FR 79312 (Dec. 29, 2008).

adequately evaluate the relationships between CUSOs and credit unions, as well as the risk posed by those relationships. As discussed in the preamble to the proposed rule, the Board believes that the information NCUA currently compiles on CUSOs is incomplete because the agency is indirectly gathering pertinent information from customer credit unions rather than directly from the CUSOs. Without additional reporting directly from CUSOs, it is impossible for NCUA to determine which CUSOs maintain relationships with which credit unions, the financial condition of CUSOs, and the full range of services offered by CUSOs. This lack of information restricts NCUA's ability to conduct offsite monitoring and evaluate the risks posed by CUSOs. As proposed, the information required in the reports would have to be submitted at least annually and would address five broad categories: (1) General information; (2) board and management; (3) services; (4) credit union customer listing; and (5) balance sheet and income statement. In addition, the Board proposed to require a newly formed CUSO to file the report within 30 days after its formation.

As discussed above, this requirement was troubling to most commenters. Commenters expressed opposition to the reporting provision and asked the agency to substantially revise or withdraw the proposal. Commenters also expressed concerns about NCUA's authority to impose the proposed requirements. They noted that NCUA does not have statutory authority to directly regulate CUSOs and, as such, the reporting requirement is overreaching. Further, commenters argued that the provision is unjustified, contending there is insufficient data to demonstrate that CUSO investments present a material risk. Moreover, they argued NCUA's current authority over CUSOs is sufficient to stem any potentially serious risk issues.

The Board disagrees. While the Board acknowledges that NCUA does not have direct statutory and regulatory authority over the operations of CUSOs, NCUA does have the authority to regulate FCUs' lending and investment in CUSOs.[13] NCUA has regulated this lending and investment authority in the CUSO rule since 1979, when this statutory provision was implemented through the promulgation of the first CUSO regulation.[14] The Board believes the proposed reporting requirement is both historically and legally consistent with NCUA's statutory authority to regulate this lending and investment authority.

Moreover, Title II of the FCU Act provides the Board with the broad authority to insure members' accounts and administer the NCUSIF, and to prescribe regulations for FICUs that are necessary to carry out that purpose.[15] All FICUs, through their application for insurance, have agreed to comply with those regulations. The current lack of information on CUSOs limits NCUA's ability to conduct offsite monitoring and assess any emergent risks to the NCUSIF posed by CUSO operations. The Board continues to believe that, to protect the NCUSIF from any such risk, it is necessary and within its authority to implement regulations that require credit unions to enter into agreements with CUSOs requiring CUSOs to submit reports directly to NCUA and the appropriate SSAs, if applicable.

Furthermore, the Board continues to believe that CUSOs present material risks to the credit union industry. Past experience has demonstrated that a single CUSO has caused losses and operational problems at multiple credit unions. Such losses have contributed to a number of credit unions' insolvency, conservatorship, or liquidation. The following are specific examples in which CUSO activity caused significant financial and/or operational problems for credit unions.[16]

Case #1—Activities involving multiple CUSOs contributed to a $1.5 billion FICU's failure. Since 2008, the FICU sustained losses totaling approximately $224 million as a direct result of its CUSO activity.

Case #2—A CUSO managed four loan pools primarily comprised of commercial loans. In addition to having loan participation agreements with 25 FICUs, the CUSO obtained warehouse lines of credit from several banks and one corporate credit union. In 2008, the CUSO's access to third party investors declined with the economic turndown. To stay in compliance with its written agreements with FICUs, the CUSO shifted mortgages from one mortgage pool to another. Investor FICUs were provided monthly reports on the loan pools, but the information was poorly presented. As a result, it was difficult for investor FICUs to determine the individual mortgages transferred among the pools. The CUSO eventually defaulted on its warehouse lines of credit. It was put into bankruptcy in 2009. In total, aggregate losses to the FICUs involved with this CUSO exceeded $47 million. Of the 25 FICUs affected, 10 were assumed by other FICUs. The aggregate cost to the NCUSIF for these actions was over $5 million.

Case #3—Nineteen FICUs incurred losses totaling over $5 million in the last 5 years from a CUSO involved in member business loan participations. An additional $6 million in losses are projected from one commercial borrower. FICUs have already reserved between 25% and 100% of their participated balances for these additional anticipated losses.

Case #4—A student lending CUSO sold participations of purchased student loans to six FICUs. Related loan losses at these FICUs are much higher than anticipated. One FICU has booked over $4 million in loan losses and projects an additional $4.5 million in losses on the portfolio.

Case #5—A CUSO underwrites and services member business loans for several FICUs. The CUSO's past performance was substandard and a large portion of the serviced loan portfolio was owned by one FCU. The FCU could not recover from the impact of the CUSO's poor lending practices, and the associated loan losses played a role in the FCU's need to merge with a healthier credit union.

Ensign FCU

Involvement in a business loan CUSO was a contributing factor to the failure of Ensign FCU, which has cost the NCUSIF approximately $38 million to date. The CUSO failed to service a member business loan portfolio according to its agreement with the credit union. In November 2010, NCUA filed a suit against the CUSO claiming the CUSO continued to collect payments on 18 commercial loans allegedly owned by Ensign FCU after the credit union was shut down in November 2009. In addition to Ensign FCU, the CUSO worked with three other credit unions. The CUSO has since dissolved.

Eastern New York FCU

Relationships with a complex network of CUSOs, a lack of board of directors' oversight of related business ventures, and improper accounting

[13] 12 U.S.C. 1757(7)(I), 1757(5)(D).

[14] 44 FR 12401 (Mar. 7, 1979).

[15] 12 U.S.C. 1781(b)(9), 1789(11).

[16] The agency does not have a formal mechanism to track information about losses attributable to CUSOs. Further, there are different types of losses that can be realized by credit unions, including losses in terms of the investment in or loan to the CUSO and losses incurred from the product or service offered by the CUSO (for example, loan losses). Credit union failures can rarely be attributed to one factor alone. Failures typically arise out of a compounding of poor decisions on the part of credit union management. There are examples, however, of losses in credit unions as a direct result of CUSO activity. In some cases, these losses led to the failure of the institutions involved.

contributed to the failure of Eastern New York FCU. Several CUSOs were created to generate income, but most of the CUSOs had very few customers. NCUA's Office of the Inspector General determined that the FCU's board of directors did not perform the necessary due diligence to ensure each CUSO was complying with all regulations. NCUA estimates the purchase and assumption of this $50 million credit union will cost the NCUSIF approximately $3.3 million.

Community One FCU

The failure of Community One FCU was due in part to losses stemming from a CUSO involved in indirect auto lending. The credit union's management engaged in an extremely large indirect lending program without adequate policies and collection procedures in place. NCUA estimates the purchase and assumption of this $159 million credit union will cost the NCUSIF approximately $6.8 million.

Kern Central Credit Union

Kern Central CU's failure was due in part to an indirect auto loan program CUSO. The credit union's losses from a concentration of indirect auto loans with high loan-to-value ratios, as well as poor management of the program, contributed to its demise. NCUA estimates the purchase and assumption of this $34 million credit union will cost the NCUSIF approximately $5.6 million.

The above examples clearly demonstrate the material risks that CUSO operations pose to the credit union industry. Moreover, the Board feels a proactive—rather than reactive—approach is necessary to prevent higher potential losses to the NCUSIF in the future. NCUA's methods of managing risk to the NCUSIF must keep pace as credit union and CUSO operations expand and present more risk to the NCUSIF.

As noted above, in 2008, the Board amended the CUSO rule to, among other things, require all FICUs to enter into agreements with CUSOs stating that the CUSOs would provide NCUA and the applicable SSA with ''complete access to any books and records of the CUSO and the ability to review CUSO internal controls.'' [17] In general, this access may involve an onsite CUSO review to determine the degree of risk the CUSO poses to credit unions and the NCUSIF. During such review, an examiner assesses the financial condition of the CUSO and the adequacy of controls; verifies the accuracy of the financial statements; determines the viability of operations and service to member credit unions; and confirms compliance with applicable laws and regulations. NCUA may request a CUSO review if there are safety and soundness concerns to credit unions or if the CUSO poses an undue risk to the NCUSIF. For example, the agency may request a review if a credit union examination raises concerns that the CUSO's operation is adversely affecting the financial condition and operation of the credit union, or if the CUSO has a significant effect on the operations of a credit union or group of credit unions that depend on its services.

While NCUA currently has the authority to access CUSO books and records and to review CUSO internal controls, the agency does not routinely engage in onsite monitoring of CUSOs. The Board believes it is more efficient and more cost-effective for the agency and the credit union system to require CUSOs to submit information about their financial condition directly to NCUA, than for the agency to collect this information indirectly through credit unions or through more widespread onsite CUSO reviews. As noted above, NCUA's current practice is to conduct an onsite CUSO review only if safety and soundness concerns to credit unions exist or if the CUSO poses an undue risk to the NCUSIF. The Board believes the final rule will improve the agency's ability to conduct offsite monitoring of CUSOs and identify emerging areas of concern.

Nevertheless, the Board recognizes that the rule could be more narrowly focused and still achieve the agency's objective of obtaining more complete and accurate information about CUSOs, the services they offer, and their financial condition. Accordingly, the Board is significantly revising the reporting requirement in the final rule.

The majority of commenters suggested NCUA should take a more targeted regulatory approach by tailoring the final rule to identified problem areas. Further, they argued that the proposal's one-size-fits-all approach was misguided. Numerous commenters contended that the rule should be exclusively targeted at CUSOs engaging in riskier activities, such as business lending. CUSOs involved in activities with less risk, such as marketing or licensing CUSOs, should not be subject to increased oversight. Commenters recommended that, at a minimum, certain types of lower-risk CUSOs should be exempted from the rule.

In light of the comments received on the proposed rule, the Board has determined to significantly reduce the scope and application of the reporting requirement in the final rule. Accordingly, the final rule narrowly focuses on CUSOs engaging in certain complex or high-risk activities. The Board notes that the types of activities qualifying as ''complex or high-risk,'' as well as the reporting requirements for CUSOs engaging in such activities, may evolve as new risks emerge. At this time, however, the Board believes that, for purposes of the reporting requirement, complex or high-risk activities include credit and lending, information technology, and custody, safekeeping, and investment management services for credit unions because these particular activities tend to affect a large number of credit unions and present a high degree of operational and/or financial risk. Activities related to these categories currently include:

- Credit and lending—
  - Business loan origination;
  - Consumer mortgage loan origination;
  - Loan support services, including servicing;
  - Student loan origination; and
  - Credit card loan origination.
- Information technology—
  - Electronic transaction services;
  - Record retention, security, and disaster recovery services; and
  - Payroll processing services.
- Custody, safekeeping, and investment management services for credit unions.[18]

Credit and lending-related activities involve credit unions' core business function and represent a high degree of potential risk. CUSOs engaging in credit and lending services have the potential to pose multiple types of risks to FICUs and the NCUSIF. Without proper monitoring and controls, FICUs making loans to, and investments in, CUSOs engaged in credit and lending activities may quickly be exposed to significant levels of credit, strategic, or reputation risks. For example, credit risk increases with poor underwriting, which may lead to decreased net worth and increased strategic and reputation risks, all of which can ultimately impact member services. Due to the higher-risk nature of credit and lending activities, the Board believes it is necessary to receive additional information about CUSOs involved in credit and lending activities in order to monitor for material levels of risk to the NCUSIF.

Information technology-related CUSOs usually engage in activities that

[17] 74 FR 79312 (Dec. 29, 2008); 12 CFR 712.3(d)(3)(i).

[18] CUSOs only engaging in trust services for individual credit union members will be required to submit only basic profile information. These CUSOs will not be required to submit the additional, enhanced report.

involve emerging complex electronic services. These services have been subject to malicious attacks, which pose transactional, reputational, and strategic risks to credit unions, and ultimately, the NCUSIF, if proper safeguards are not in place. Moreover, credit union members have been adversely impacted by breaches in network security. The additional data collected for CUSOs engaging in IT services will enable NCUA to better monitor and respond to these increased risks.

In addition, the Board believes CUSOs engaging in custody, safekeeping, and investment management services for credit unions require robust monitoring due to the complex nature of these services. Credit unions place a high degree of reliance on these CUSOs because credit unions are entrusting their assets and their members' assets to CUSOs. As a result, there are increased reputational, strategic, and compliance risks that warrant additional monitoring by NCUA.

Under the final rule, only CUSOs engaging in these complex or high-risk activities are required to report substantive information. All other CUSOs will register only basic profile information. Specifically, the final rule requires a FICU to obtain a written agreement from a CUSO before investing in or lending to the CUSO. This written agreement must provide that the CUSO will annually submit, pursuant to NCUA guidance, a report containing general registration information directly to NCUA and the appropriate SSA, if applicable. This basic registration information will consist of general profile information, including the CUSO's legal name; tax identification number (e.g., EIN); address; telephone number; Web site; primary point of contact; services offered; name(s) and charter(s) of credit union(s) investing in, lending to, or receiving services from the CUSO; and investor(s) and/or subsidiary CUSO(s). The Board believes this is the minimal amount of information necessary to meet the agency's objective of obtaining a clearer and more transparent representation of the CUSO industry.

Only CUSOs involved in complex or high-risk activities will be subject to an additional, enhanced reporting requirement. Specifically, in addition to the basic profile information described above, CUSOs engaged in certain complex or high-risk activities will be required to report more detailed information, including audited financial statements and more specific customer information. The Board believes this additional information is crucial in order for the agency to effectively analyze and monitor the risks CUSOs present to FICUs and the NCUSIF. Specifically, CUSOs engaging in complex or high-risk activities will be required to report:

- For each credit union investing in, lending to, or receiving services from the CUSO:
  - Services provided to each credit union;
  - The investment amount, loan amount, or level of activity of each credit union; and
- The CUSO's most recent year-end audited financial statements.

In addition, CUSOs engaging in credit and lending services will be required to report the following activity by loan type:

- The total dollar amount of loans outstanding;
- The total number of loans outstanding;
- The total dollar amount of loans granted year-to-date; and
- The total number of loans granted year-to-date.

CUSOs that previously were not involved in complex or high-risk activities that become involved in such activities by virtue of: (1) A merger with or acquisition of a CUSO that engages in such activities; or (2) adding new products or services that are complex or high-risk activities will be subject to the enhanced reporting requirement. For example, if a CUSO providing real estate brokerage services merges into a CUSO involved in consumer mortgage loan origination, then the continuing CUSO will be required to submit the additional, enhanced report in the next reporting cycle. Moreover, if a CUSO engaging in checking and currency services begins to offer payroll processing services, then it too will become subject to the enhanced reporting requirement.

Some commenters objected that the actual reporting form required under the proposal would be issued as guidance, without the opportunity for public comment. The Board believes it would be advantageous for FICUs and CUSOs to have the opportunity to review the format and content of the draft reporting form, so all affected parties are adequately prepared to comply with the new requirements once the reporting system is fully established. Accordingly, the draft reporting form is being published in conjunction with this rulemaking. The draft form illustrates the intended reporting format for the basic registration for all CUSOs, as well as the expanded reporting requirement for CUSOs involved in complex or high-risk services. The Board emphasizes that the draft reporting form is subject to change as the agency works to develop and implement the new reporting system for CUSOs. Furthermore, future modifications may be made to the reporting form based on NCUA's assessment of current needs. NCUA intends to submit a copy of the reporting form to the Office of Management and Budget (OMB), as required by the Paperwork Reduction Act (PRA). Accordingly, the public will be provided an opportunity to comment on the form's paperwork requirements. The draft reporting form is found in Section IV of this **SUPPLEMENTARY INFORMATION**.

Many commenters raised concerns that the proposed reporting requirement could potentially expose CUSOs' confidential business information and trade secrets to public dissemination through Freedom of Information Act (FOIA) requests, putting them at a competitive disadvantage to their non-CUSO counterparts. The Board is sensitive to these concerns. It notes that the FOIA, as well as the applicable exemptions set forth in NCUA's implementing FOIA regulations, applies to any data or information submitted by CUSOs to NCUA under § 712.3(d)(4). The Board anticipates that CUSO submissions will contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' This type of information is subject to withholding under exemption 4 of the FOIA.[19] In addition, information that is ''contained in *or related to* examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions'' is subject to withholding under exemption 8 of the FOIA.[20] To the extent, however, that CUSO submissions may contain or consist of data or information not subject to an applicable FOIA exemption, for example, a CUSO's name, address, or other publicly available information, that data or information would be releasable under the FOIA.

Several commenters noted that the proposal required the financial report to be submitted ''at least'' annually. These commenters urged NCUA to clearly define the reporting frequency as ''annual.'' The Board agrees that reporting under the new rule should occur on an annual basis. As such, the final rule modifies the requirement by establishing the reporting frequency as ''annually.'' Additionally, the final rule

[19] 5 U.S.C. 552(b)(4); 12 CFR 792.11(a)(4).

[20] 5 U.S.C. 552(b)(8); 12 CFR 792.11(a)(8) (emphasis added).

modifies the proposed requirement that a newly formed CUSO file a report within 30 days after its formation. Under the final rule, all newly formed CUSOs will be required to file a report within 60 days of formation. For newly formed CUSOs involved in complex or high-risk activities, such report must include the enhanced information; all other newly formed CUSOs will report only basic registration information. For purposes of this requirement, the definition of ''newly formed CUSO'' includes a newly established business or an established business that becomes subject to this regulation by virtue of a credit union's investment or loan to the business. Again, NCUA will publish guidance on the report, providing more specific information on the correct format, timing, and required information.

Commenters also raised concerns that the proposal is unclear about how the information reported directly by CUSOs will be used by the agency. Numerous commenters noted that, by design, CUSOs generally do not have a sizable capital structure or generate significant income. These commenters urged NCUA not to evaluate CUSOs based solely on their balance sheets and income statements.

The Board is mindful of commenters' concerns and emphasizes that the agency appreciates the value that CUSOs bring to the credit union industry as collaborative tools for credit unions to achieve economies of scale, retain expertise, and better serve their members. The Board recognizes that CUSOs, in their supportive function, are intentionally designed to operate on thin margins in order to realize greater benefits to credit unions. Accordingly, the Board understands that balance sheets and income statements alone do not reflect the true value of CUSOs. The Board continues to believe, however, that the ability to accurately inventory CUSOs and evaluate their financial and operational condition is paramount to mitigating risk to the credit union system as a whole. It emphasizes that NCUA intends to use the information reported by CUSOs to inform the agency's supervisory oversight of FICUs. For example, NCUA may use the information to help credit unions improve their due diligence, to raise examiner awareness of identified risks, and to foster collaborative problem-solving among CUSOs, credit unions, SSAs, and NCUA. The Board feels that the final rule achieves the balance of exercising regulatory restraint while ensuring the ultimate safety and soundness of the NCUSIF.

Subsidiary CUSOs—§ 712.11

The proposed rule added a new section to the CUSO regulation, applicable to both FCUs and FISCUs, prohibiting a FICU from investing in a CUSO unless all subsidiaries of the CUSO also agree to follow all applicable laws and regulations. (Proposed § 712.11).

A significant number of commenters expressed concern that the proposal would treat any entity in which a CUSO invests as a subsidiary subject to the CUSO regulation. They argued that non-controlling investments should not trigger the regulation. Several commenters suggested that the informal rule has been that a CUSO subsidiary is impermissible if the subsidiary was formed with the intent and purpose of evading the CUSO rule, and they recommended that the Board adopt this standard in the final rule.

The Board disagrees and adopts the subsidiary provision substantially as proposed. NCUA's policy with regard to CUSO subsidiaries has been publicly stated since at least 1997, although it has never been included in regulatory text. Specifically, under existing policy, the CUSO rule applies to all levels or tiers of a CUSO's structure. Any subsidiary entity in which a CUSO invests will also be treated as a CUSO and, thus, subject to the regulation.[21] The Board continues to believe there is an inherent risk that a subsidiary CUSO could adversely affect the investing credit union and, ultimately, the NCUSIF. Accordingly, the final rule clarifies the regulation's applicability to subsidiary CUSOs by codifying NCUA's existing policy in the regulatory text. The Board believes it is appropriate to codify this requirement in the regulation to ensure that credit unions and CUSOs are aware that the requirements of the CUSO rule and applicable state rules apply to all subsidiary entities in which a CUSO invests, including those entities with the appearance of being formed with the intent and purpose of evading the CUSO rule. This requirement will apply to any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members. The provision, however, will not apply to third parties with whom a CUSO contracts or otherwise does business. Because this provision (§ 712.11) applies to all FICUs, the definition of a CUSO in § 741.222 is also amended to include subsidiary entities in which a CUSO invests any amount, if that entity is engaged primarily in providing products or services to credit unions or members.

Definitions and Conforming Amendments

The Board is making several technical and conforming amendments. The final rule updates § 712.1 to make certain technical changes, to reflect the amendments in this rulemaking, and to add a definition to provide that the term ''federally insured credit union'' or ''FICU'' means all FCUs and FISCUs. In addition, the final rule brings the language contained in § 741.222 that defines the term ''CUSO'' into § 712.1 as well. The Board believes that parallel references to ''CUSO'' in both § 712.1 and § 742.222 will add clarity and consistency to the regulations addressing CUSOs. Additionally, § 712.1 and § 741.222 are being revised to conform with § 701.30, which was amended to include remittance transfers.[22] Finally, technical changes are made in § 712.4(b) to clarify that written legal advice is required prior to a FICU investing in a CUSO.

State Exemptions

Section 712.10 of the current rule allows SSAs to apply for an exemption, on behalf of FISCUs, from § 712.3(d)(3), the provision addressing access to books and records with which FISCUs must comply. Because the proposed rule added additional requirements for FISCUs (proposed § 712.3(d)(1) and (2)), the proposal expanded § 712.10 to allow SSAs to obtain an exemption, on behalf of FISCUs, from compliance with these additional provisions. The proposed changes did not alter the manner in which an SSA can obtain an exemption, but merely made changes that take into account that some states may already have equivalent or more stringent rules or requirements that govern financial reporting, audits, and accounting practices of FISCUs and their CUSOs. The proposed rule, however, did not allow for an SSA to apply for an exemption, on behalf of FISCUs, from the new reporting requirement in proposed § 712.3(d)(4) because allowing an exemption from this requirement would result in inconsistent reporting based on the varying laws in the different states. Commenters were either generally supportive of, or did not provide comment on, these particular changes. Accordingly, the Board adopts the amendments to § 712.10 substantially as proposed. The final rule clarifies, however, that NCUA may grant

[21] 62 FR 11781 (Mar. 13, 1997).

[22] 76 FR 44761 (July 27, 2011); 76 FR 73993 (Nov. 30, 2011).

state exemptions from any or all of § 712.3(d)(1), (2), and (3) only if state law is equal to, or more stringent than, NCUA's requirements.

Transition Period for Compliance

The Board recognizes that FICUs with loans to or investments in CUSOs will be required under this final rule to make changes in the agreements they currently have with their CUSOs. Accordingly, the effective date of the final rule is June 30, 2014. Additionally, CUSOs will begin submitting reports to NCUA under new § 712.3(d)(4) when the agency's reporting system is fully operational, which will be by December 31, 2015.

IV. Draft Reporting Form

The Board is publishing a draft reporting form to illustrate the intended format for CUSO reports submitted under § 712.3(d)(4) of this final rule. The draft shows the planned reporting format for the basic registration for all CUSOs, as well as the expanded reporting requirement for CUSOs engaging in complex or high-risk activities. The Board notes, however, that the draft reporting form is subject to change as the agency develops and implements the new reporting system for CUSOs. Further, once finalized, the agency may later modify the reporting form based on NCUA's assessment of changing industry needs. In accordance with the requirements of the PRA, NCUA will submit a copy of the reporting form to the OMB, along with an application for an OMB Control Number. At that time, the public will be provided an opportunity to comment on the form's paperwork requirements, including NCUA's estimate of the burden of the paperwork requirements.

DRAFT Basic Registration Data Collection

CUSO Information

EIN			Are you a subsidiary CUSO?	Yes/No		Are you a parent CUSO?	Yes/No
Legal Name			If Yes (allows multiple entries):			If Yes (allows multiple entries):	
Physical Address			- Parent CUSO EIN			- Subsidiary EIN	
Mailing Address			- Parent CUSO Legal Name			- Subsidiary Legal Name	
Phone Number							
Website Address							

CUSO Services Offered (check all that apply)

Checking & Currency Services	Insurance Brokerage or Agency	Travel Agency Services
Clerical, Professional, & Management Services	Leasing	Custody, safekeeping, and investment management services for credit unions **
Business Loan Origination*	Loan Support Services*	Real Estate Brokerage Services
Consumer Mortgage Origination*	Record Retention, Security & Disaster**	CUSO Investments in non-CUSO Service Providers
Electronic Transaction Services**	Securities Brokerage Services	Credit Card Loan Origination*
Financial Counseling Services	Shared Credit Union Branch (service center operations)	Payroll Processing Services**
Fixed Asset Services	Student Loan Origination*	Other (Please Identify)

* Complete Expanded Complex Activities Data Collection & Expanded Complex Credit Activities Data Collection Forms

** Complete Expanded Complex Activities Data Collection Form

CUSO Point of Contact Information

Name	
Work Phone Number	
Work Email Address	

Customer Information (allows multiple entries)

Charter	Name

Upload customer/client file here. (allows for upload of client list in structured format)

DRAFT Expanded Complex Activities Data Collection

CUSO Information

EIN: Prepopulated from page 1	Legal Name: Prepopulated from page 1

Customer Information (allows multiple entries)

Charter: Prepopulated from page 1	Name: Prepopulated from page 1	Services Used (drop down list provided)	Amount of Investment, Loan, or Level of Activity

Financial Information

Please upload CUSO's most current year-end audited financial statement here.

DRAFT Expanded Complex Credit Activities Data Collection

Loan Data

Type of Loan (drop down box of loans by type)	Total Number of Loans Outstanding	Total Dollar Amount of Loans Outstanding	Total Number of Loans Granted YTD	Total Dollar Amount of Loans Granted YTD

V. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities. NCUA considers credit unions having less than fifty million dollars in assets to be small for purposes of RFA.[23] The changes to the CUSO rule impose minimal compliance obligations by requiring FISCUs to comply with certain regulatory requirements concerning agreements with CUSOs and certain recapitalization limits. NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The PRA applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[24] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA recognizes that this final rule requires FISCUs and FCUs to comply with certain requirements that constitute an information collection within the meaning of the PRA. Under this rule, FISCUs with an investment in or loan to a CUSO will need to revise the current agreement they have with their CUSO to provide that the CUSO will account for all its transactions in accordance with GAAP, prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant. The rule also requires FISCUs, in certain circumstances, to submit an application for regulatory approval to recapitalize an insolvent CUSO. Additionally, the final rule requires FICUs to enter into agreements with CUSOs requiring CUSOs to submit reports directly to NCUA and the appropriate SSA.

Currently, NCUA cannot fully determine the total number of CUSOs that presently exist, which CUSOs maintain relationships with which credit unions, the financial condition of CUSOs, or the full range of services offered by CUSOs. The current information is incomplete, primarily because the agency is collecting information from the CUSOs' credit union clients rather than directly from each CUSO itself. Nevertheless, according to NCUA records, of the 2,492 FISCUs that filed a Form 5300 Call Report with NCUA as of June 30, 2013, 1,161 reported an interest in at least one CUSO, and a total of 2,836 CUSO interests was reported. For purposes of this analysis, NCUA estimates that this requirement will affect all FISCUs reporting an interest in a CUSO. Using these estimates, information collection obligations imposed by this aspect of the rule, on an annual basis, are analyzed below:

Changing the written agreement relating to certain accounting and reporting requirements.

FISCUs with a reported interest in a CUSO as of 6/30/2013: 1,161.

Frequency of response: one-time [25]

Initial hour burden: 4.

4 hour × 1,161 = 4,644

In addition to the requirement for FISCUs to revise their agreements with CUSOs, this rule also requires FCUs with an investment in or loan to a CUSO to revise the current agreement they have with their CUSO to provide that the CUSO submit a financial report directly to NCUA. According to NCUA records, of the 4,189 FCUs that filed a form 5300 call report with NCUA as of June 30, 2013, 1,413 reported at least one interest in a CUSO; a total of 3,275 CUSO interests was reported. For purposes of this analysis, NCUA estimates that this requirement will affect all FCUs with a reported interest

[23] Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2, 68 FR 30950 (May 29, 2003) and IRPS 13–1, 78 FR 4032 (Jan. 18, 2013).

[24] 44 U.S.C. 3507(d); 5 CFR Part 1320.

[25] One-time estimates account for, on average, approximately two CUSOs per credit union. The actual frequency will vary based on the credit union's actual number of reported interests in a CUSO.

in a CUSO. Using these estimates, information collection obligations imposed by this aspect of the rule, on an annual basis, are analyzed below:

Changing the written agreement relating to reports to NCUA.

FCUs with a reported interest in a CUSO as of 6/30/2013: 1,413.

Frequency of response: one-time.

Initial hour burden: 4.

4 hour × 1,413 = 5,652

Initial CUSO reporting to NCUA—basic information.

Reported CUSOs as of 6/30/2013 [26]: 1,197.

Frequency of response: one-time.

Initial hour burden: 0.5.

0.5 × 1,197 = 598.5

Initial CUSO reporting to NCUA—expanded information.

Reported CUSOs providing credit and lending, IT, or custody, safekeeping, and investment management services for credit unions as of 6/30/2013: [27] 600.

Frequency of response: one-time.

Initial hour burden: 3.

3 hours × 600 = 1,800

Annual CUSO reporting to NCUA—expanded information.

Reported CUSOs providing credit and lending, IT, or custody, safekeeping, and investment management services for credit unions services as of 6/30/2013: 600.

Frequency of response: Annual.

Initial hour burden: 3.

3 hour × 600 = 1,800

Direct reporting by CUSOs, however, will lessen the existing burden to FICUs for reporting their CUSO interests to NCUA. According to NCUA records, of the 6,681 FICUs that filed a form 5300 call report with NCUA as of June 30, 2013, 2,574 reported at least one interest in a CUSO.

For purposes of this analysis, NCUA estimates that this requirement will affect all FICUs with a reported interest in a CUSO. Using these estimates, the reduced burden to FICUs by this aspect of the rule, on an annual basis, is analyzed below:

Completing the CUSO section of 5300 call report.

FICUs with a reported interest in a CUSO as of 6/30/2013: 2,574.

Frequency of response: Quarterly.

Reduced hour burden: 0.4.

0.4 hours × 2,574 × 4 = 4,118.4

Completing the CUSO section of CU Online profile.

FICUs with a reported interest in a CUSO as of 6/30/2013: 2,574.

Frequency of response: Semi-annually.

Reduced hour burden: 0.2.

0.2 hours × 2,574 × 2 = 1,029.6

Another aspect of this final rule that involves PRA consideration is the requirement pertaining to recapitalizing CUSOs that have become insolvent. The final rule will require certain FISCUs to seek and obtain prior approval from their SSA before making an investment to recapitalize an insolvent CUSO. According to NCUA's records, as of June 30, 2013, there were only 17 FISCUs that were less than adequately capitalized (i.e., net worth of under 6%). Of these FISCUs, 9 currently have an interest in a CUSO. NCUA estimates it would take a FISCU approximately two hours to complete a request for the SSA's prior approval for an investment to recapitalize an insolvent CUSO.

Obtaining regulatory approval:

Total less than adequately capitalized FISCUs with an interest in a CUSO as of 6/30/2013: 9.

Frequency of response: one-time.

Initial hour burden: 2.

2 hours × 9 = 18

In accordance with the requirements of the PRA, NCUA intends to obtain a modification of its OMB Control Number, 3133–0149, to support these changes. Simultaneously with its publication of this final rule, NCUA is submitting a copy of the final rule to OMB, along with an application for a modification of the OMB Control Number.

The PRA and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency,[28] voluntarily complies with the Executive Order.

The major aspects of the rule make certain aspects applicable to FISCUs. By law, these institutions are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. In developing the rule, NCUA worked with representatives of the state credit union regulatory community. This rule incorporates a mechanism by which states may request an exemption from coverage of part of the rule for institutions in that state, provided certain criteria are met. In any event, the final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[29]

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 [30] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[31] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has

[26] Numbers reported may be over or understated based on the problems with gathering CUSO data from credit unions rather than from CUSOs directly.

[27] Estimates are likely overstated as credit unions currently report only broad categories of services as defined in the regulation. The expanded reporting requirements under this rule are more narrowly defined and will result in fewer CUSOs affected.

[28] 44 U.S.C. 3502(5).

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

[30] Public Law 104–121, 110 Stat. 857 (1996).

[31] 5 U.S.C. 551.

submitted the rule to OMB for its determination in that regard.

List of Subjects

12 CFR Part 712

Administrative practices and procedure, credit, credit unions, insurance, investments, reporting, and record keeping requirements.

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

By the National Credit Union Administration Board on November 21, 2013.

Gerard Poliquin,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR Parts 712 and 741 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOS)

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1781(b)(9), 1782, 1784, 1785, 1786 and 1789(11).

■ 2. Revise § 712.1 to read as follows:

§ 712.1 What does this part cover?

(a) This part establishes when a federal credit union (FCU) can invest in and make loans to credit union service organizations (CUSOs). CUSOs are subject to review by NCUA. This part does not apply to corporate credit unions that have CUSOs subject to § 704.11 of this chapter.

(b) All sections of this part apply to FCUs. Sections 712.2(d)(2)(ii), 712.3(d), 712.4 and 712.11(b) and (c) of this part apply to federally insured, state-chartered credit unions (FISCUs), as provided in § 741.222 of this chapter. FISCUs must follow the law in the state in which they are chartered with respect to the sections in this part that only apply to FCUs.

(c) As used in this part, federally insured credit union (FICU) means an FCU or FISCU.

(d) As used in this part, CUSO means any entity in which a FICU has an ownership interest or to which a FICU has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including cashing checks and money orders for a fee, and selling negotiable checks, including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, 15 U.S.C. 1693o–1), to persons eligible for membership in any credit union having a loan, investment or contract with the entity. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members.

■ 3. Revise § 712.2(d)(2) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) * * *

(2) *Special rule in the case of less than adequately capitalized FICUs.* This rule applies in the case of a FICU that is currently less than adequately capitalized, as determined under part 702 of this chapter, or where the making of an investment in a CUSO would render the FICU less than adequately capitalized under part 702 of this chapter. Before making an investment in a CUSO:

(i) A less than adequately capitalized FCU, or an FCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes, but limited to the immediately preceding seven (7) years) in an amount that is in excess of 1% of its paid-in and unimpaired capital and surplus; or

(ii) A less than adequately capitalized FISCU, or a FISCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, must obtain prior written approval from the appropriate state supervisory authority if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes, but limited to the immediately preceding seven (7) years) in an amount that is in excess of the investment limit in the state in which it is chartered. A FISCU must also contemporaneously submit a copy of this request to the appropriate NCUA regional office. If there is no state limit in the state in which a FISCU is chartered, the requirements in paragraph (d)(2)(i) of this section will apply to that FISCU.

* * * * *

■ 4. Revise § 712.3(d) to read as follows:

712.3 What are the characteristics of and what requirements apply to CUSOs?

* * * * *

(d) *CUSO accounting; audits and financial statements; NCUA access to information.* A FICU must obtain a written agreement from a CUSO before investing in or lending to the CUSO that the CUSO will:

(1) Account for all of its transactions in accordance with GAAP;

(2) Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if that wholly owned CUSO is included in the annual consolidated financial statement audit of the investing FICU;

(3) Provide NCUA, its representatives, and the state supervisory authority having jurisdiction over any FISCU with an outstanding loan to, investment in or contractual agreement for products or services with the CUSO with complete access to any books and records of the CUSO and the ability to review the CUSO's internal controls, as deemed necessary by NCUA or the state supervisory authority in carrying out their respective responsibilities under the Act and the relevant state credit union statute;

(4) Annually submit, pursuant to NCUA guidance, a report directly to NCUA and the appropriate state supervisory authority, if applicable. A newly formed CUSO (including a pre-existing business which becomes subject to this regulation by virtue of a credit union investment or loan) must file a report within 60 days of its formation. The report must contain basic registration information, including the CUSO's legal name; tax identification number; address; telephone number; Web site; primary point of contact; services offered; the name(s) and charter(s) of credit union(s) investing in, lending to, or receiving services from the CUSO; and investor and/or subsidiary CUSO(s). In addition, for any CUSO engaged in complex or high-risk activities, the report must contain:

(i) For each credit union investing in, lending to, or receiving services from the CUSO:

(A) A list of services provided to each credit union;

(B) The investment amount, loan amount, or level of activity of each credit union;

(ii) The CUSO's most recent year-end audited financial statements; and

(iii) (A) For CUSOs engaged in credit and lending services:

(*1*) The total dollar amount of loans outstanding;

(*2*) The total number of loans outstanding;

(*3*) The total dollar amount of loans granted year-to-date; and

(*4*) The total number of loans granted year-to-date.

(B) Such information must be provided by loan type for each type of loan originated or serviced by the CUSO.

(5) For purposes of paragraph (d)(4) of this section, complex or high-risk activities include preapproved CUSO activities and services related to credit and lending, information technology, and custody, safekeeping, and investment management services for credit unions. Specific activities related to these categories include:

(i) *Credit and lending:*

(A) Business loan origination;

(B) Consumer mortgage loan origination;

(C) Loan support services, including servicing;

(D) Student loan origination; and

(E) Credit card loan origination.

(ii) *Information technology:*

(A) Electronic transaction services;

(B) Record retention, security, and disaster recovery services; and

(C) Payroll processing services.

(iii) *Custody, safekeeping, and investment management services for credit unions.*

* * * * *

■ 5. Revise § 712.4 to read as follows:

§ 712.4 What must a FICU and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* A FICU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FICU and the CUSO. Good business practices dictate that each must operate so that:

(1) Its respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of its separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise;

(5) The FICU does not dominate the CUSO to the extent that the CUSO is treated as a department of the FICU; and

(6) Unless the FICU has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the FICU is not liable.

(b) *Written legal advice.* Prior to a FICU investing in a CUSO, the FICU must obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the FICU to no more than the loss of funds invested in, or loaned to, the CUSO. In addition, if a FICU invests in, or makes a loan to, a CUSO, and that CUSO plans to change its structure under § 712.3(a), the FICU must also obtain prior written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the FICU to no more than the loss of funds invested in, or loaned to, the CUSO. The written legal advice must address factors that have led courts to ''pierce the corporate veil,'' such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The written legal advice must be provided by independent legal counsel of the investing FICU or the CUSO.

§ 712.9 [Removed and Reserved]

■ 6. Remove and reserve § 712.9.

■ 7. Revise § 712.10 to read as follows:

§ 712.10 How can a state supervisory authority obtain an exemption for FISCUs from compliance with § 712.3(d)(1), (2), and (3)?

(a) The NCUA Board may exempt FISCUs in a given state from compliance with any or all of § 712.3(d)(1), (2), and (3) if the NCUA Board determines the laws in that state are equal to, or more stringent than, § 712.3(d)(1), (2), and (3), and the laws and procedures available to the supervisory authority in that state are sufficient to provide NCUA with the degree of access and information it believes is necessary to evaluate the safety and soundness of FICUs having business relationships with CUSOs owned by FISCUs in that state.

(b) To obtain an exemption, the state supervisory authority must submit a copy of the legal authority pursuant to which it secures the information required in § 712.3(d)(1), (2), and (3) of this part to NCUA's regional office having responsibility for that state, along with all procedural and operational documentation supporting and describing the actual practices by which it implements and exercises the authority.

(c) The state supervisory authority must provide the regional director with an assurance that NCUA examiners will be provided with co-extensive authority and will be allowed direct access to CUSO books and records at such times as NCUA, in its sole discretion, may determine necessary or appropriate. For purposes of this section, access includes the right to make and retain copies of any CUSO record, as to which NCUA will accord the same level of control and confidentiality that it uses with respect to all other examination-related materials it obtains in the course of its duties.

(d) The state supervisory authority must also provide the regional director with an assurance that NCUA, upon request, will have access to copies of any financial statements or reports which a CUSO has provided to the state supervisory authority.

(e) The regional director will review the applicable authority, procedures and assurances and forward the exemption request, along with the regional director's recommendation, to the NCUA Board for a final determination.

(f) For purposes of this section, whether an entity is a CUSO shall be determined in accordance with the definition set out in § 741.222 of this chapter.

■ 8. Add new § 712.11 to read as follows:

§ 712.11 What requirements apply to subsidiary CUSOs?

(a) *FCUs investing in a CUSO with a subsidiary CUSO.* FCUs may only invest in or loan to a CUSO, which has a subsidiary CUSO, if the subsidiary CUSO satisfies all of the requirements of this part. The requirements of this part apply to all tiers or levels of a CUSO's structure.

(b) *FISCUs investing in a CUSO with a subsidiary CUSO.* FISCUs may only invest in or loan to a CUSO which has a subsidiary CUSO, if the subsidiary CUSO complies with the following:

(1) All applicable state laws and rules regarding CUSOs; and

(2) All of the requirements of this part that apply to FISCUs, which are listed in § 712.1. The requirements of this part that apply to FISCUs apply to all tiers or levels of a CUSO's structure.

(c) For purposes of this section, a subsidiary CUSO is any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members.

PART 741—REQUIREMENTS FOR INSURANCE

■ 9. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d.

■ 10. Revise § 741.222 to read as follows:

§ 741.222 Credit union service organizations.

(a) Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in §§ 712.2(d)(2)(ii), 712.3(d), 712.4 and 712.11(b) and (c) of this chapter concerning permissible investment limits for less than adequately capitalized credit unions, agreements between credit unions and their credit union service organizations (CUSOs), the requirement to maintain separate corporate identities, and investments and loans to CUSOs investing in other CUSOs. For purposes of this section, a CUSO is any entity in which a credit union has an ownership interest or to which a credit union has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including cashing checks and money orders for a fee, and selling negotiable checks, including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, 15 U.S.C. 1693o-1), to persons eligible for membership in any credit union having a loan, investment or contract with the entity. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members.

(b) This section shall have no preemptive effect with respect to the laws or rules of any state providing for access to CUSO books and records or CUSO examination by credit union regulatory authorities.

[FR Doc. 2013–28479 Filed 12–2–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0673; Directorate Identifier 2013–NM–057–AD; Amendment 39–17681; AD 2013–24–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 707 airplanes; and Model 720 and 720B series airplanes. This AD was prompted by reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. This AD requires an inspection of the left- and right-hand wing fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations, and to replace any door with an impact-resistant access door if necessary. This AD also requires an inspection for stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. This AD also requires revising the maintenance program to incorporate changes to the airworthiness limitations section. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 7, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; 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: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on August 13, 2013 (78 FR 49237). The NPRM proposed to require an inspection of the left- and right-hand wing fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations, and to replace any door with an impact-resistant access door if necessary. The NPRM also proposed to require an inspection for stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. The NPRM also proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The Boeing Company stated that it supports the NPRM (78 FR 49237, August 13, 2013).

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM (78 FR 49237, August 13, 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 49237, August 13, 2013).

Costs of Compliance

We estimate that this AD affects 13 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
Inspection	Up to 12 work-hours × $85 per hour = $1,020	$0	$1,020	$13,260
Maintenance program revision	1 work-hour × $85 per hour = $85	0	85	1,105

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement per door	$3 work-hours × $85 per hour = $255	$8,000	$8,255
Stencil and index marker (16 to 18 doors per airplane).	1 work-hour per door × $85 per hour = $85 per door	0	1,530

According to the manufacturer, 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 for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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 adding the following new airworthiness directive (AD):

2013–24–07 The Boeing Company: Amendment 39–17681; Docket No. FAA–2013–0673; Directorate Identifier 2013–NM–057–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; and Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category; as identified in Boeing 707 Service Bulletin 3532, dated January 12, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

(f) Compliance

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

(g) Inspections

Within 72 months after the effective date of this AD, do the actions specified in

paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing 707 Service Bulletin 3532, dated January 12, 2012.

(1) Do either a general visual inspection or ultrasonic non-destructive test of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations. If any standard access door is found, before further flight, replace with an impact-resistant access door, in accordance with the Accomplishment Instructions of Boeing 707 Service Bulletin 3532, dated January 12, 2012.

(2) Do a general visual inspection of the left- and right-hand wing fuel tank impact-resistant access doors to verify stencils and index markers are applied. If a stencil or index marker is missing, before further flight, apply stencil or index marker, as applicable, in accordance with the Accomplishment Instructions of Boeing707 Service Bulletin 3532, dated January 12, 2012.

(h) Maintenance Program Revision

Within 60 days after the effective date of this AD, revise the maintenance program to incorporate Critical Design Configuration Control Limitations (CDCCL) Task 57–AWL–01, Impact-Resistant Fuel Tank Access Doors, of Subsection B, Airworthiness Limitations (AWLs) of the Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, Revision September 2012.

(i) No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) 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 paragraph (k) 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.

(k) Related Information

For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(l) 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) Boeing 707 Service Bulletin 3532, dated January 12, 2012.

(ii) Critical Design Configuration Control Limitations (CDCCL) Task 57–AWL–01, Impact-Resistant Fuel Tank Access Doors, of Subsection B, Airworthiness Limitations (AWLs) of the Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, Revision September 2012.

(3) 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.*

(4) 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.

(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 November 15, 2013.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28193 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0475; Directorate Identifier 2013–NE–18–AD; Amendment 39–17669; AD 2013–23–14]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain General Electric Company model GEnx–2B67 and GEnx–2B67B turbofan engines. This AD was prompted by the original equipment manufacturer's disclosure that certain critical rotating life-limited parts (LLPs) used in Boeing 747–8 flight tests had consumed more cyclic life than they would have in revenue flight cycles. These parts were then installed into engines and introduced into revenue service without adjustment to remaining cyclic life. This AD requires a one-time adjustment to the cycle counts of those LLPs to account for the additional low cycle fatigue (LCF) life consumed during flight tests. We are issuing this AD to prevent the failure of critical rotating LLPs, uncontained engine failure, and damage to the airplane.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 7, 2014.

ADDRESSES: For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Carlos Fernandes, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7189; fax: (781) 238–7199; email: *carlos.fernandes@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would

apply to the specified products. The NPRM published in the **Federal Register** on August 5, 2013 (78 FR 47235). The NPRM proposed to require a one-time adjustment to the cycle counts of certain critical rotating LLPs to account for the additional LCF life consumed in Boeing 747–8 flight tests.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 47235, August 5, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 4 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour per engine to comply with this AD. The average labor rate is $85 per hour. The prorated cost of required parts will be about $50,000 per engine. Based on these figures, we estimate the cost of this AD to U.S. operators to be $200,340.

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

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.

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):

2013–23–14 General Electric Company: Amendment 39–17669; Docket No. FAA–2013–0475; Directorate Identifier 2013–NE–18–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain serial number General Electric Company (GE) model GEnx–2B67 and GEnx–2B67B turbofan engines. The affected engine serial numbers are: 959–102 through 959–104; 959–107; 959–110 through 959–111; 959–113 through 959–118; 959–121; 959–124 through 959–133; 959–159 through 959–161; 959–164; 959–176; and 959–191.

(d) Unsafe Condition

This AD was prompted by GE's report that certain critical rotating life-limited parts (LLPs) used in Boeing 747–8 flight tests had consumed more cyclic life than they would have in revenue service flights. These parts were then installed into engines and introduced into revenue service without adjustment to remaining cyclic life. We are issuing this AD to prevent the failure of critical rotating LLPs, uncontained engine failure, and damage to the airplane.

(e) Compliance

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

(f) Adjust the Cycle Counts of Certain Critical Rotating LLPs

Within 30 days after the effective date of this AD, perform a one-time adjustment to the cycle count of each part identified in paragraph 4, Appendix A, of GE Service Bulletin No. GEnx–2B S/B 72–0116, Revision 1, dated April 23, 2013.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

For more information about this AD, contact Carlos Fernandes, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7189; fax: (781) 238–7199; email: *carlos.fernandes@faa.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) General Electric (GE) Service Bulletin No. GEnx-2B S/B 72–0116, Revision 1, dated April 23, 2013.

(ii) Reserved.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.*

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

(5) You may view this service information 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 Burlington, Massachusetts, on November 14, 2013.

Frank P. Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 2013–28293 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1313; Directorate Identifier 2012–NM–080–AD; Amendment 39–17651; AD 2013–22–19]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. This AD was prompted by reports of two independent types of failure of the fuel boost pump with overheat damage found on the internal components and external housing on one of the failure types, and fuel leakage on the other. This AD requires inspecting to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance program to include revised instructions for continued airworthiness. We are issuing this AD to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 7, 2014.

ADDRESSES: For Gulfstream, Triumph Aerostructures, and General Electric (GE) Aviation service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. 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/#!docketDetail;D=FAA-2012-1313;* 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: Darby Mirocha, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5573; fax: (404) 474–5606; email: *darby.mirocha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on December 26, 2012 (77 FR 75908). The NPRM proposed to require doing an inspection to determine if fuel boost pumps having a certain part number (P/N) are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance program to include revised instructions for continued airworthiness.

This AD was prompted by reports of two independent types of failure of the fuel boost pump with overheat damage found on the internal components and external housing on one of the failure types, and fuel leakage on the other. We are issuing this AD to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (77 FR 75908, December 26, 2012) and the FAA's response to each comment.

Request To Revise the Precipitating Event

Gulfstream Aerospace Corporation (Gulfstream) requested that the precipitating event in the **SUMMARY** section of the NPRM (77 FR 75908, December 26, 2012) be revised to provide clarity not provided elsewhere in the NPRM—namely, although two distinct failure types have been reported, there have been no reports of any fuel pump exhibiting both failure types.

We agree with Gulfstream's request. We agree that the failures in service were separate events and no single pump was found with both failure modes present. We have changed the **SUMMARY** section and paragraph (e) of this final rule to include language suggested by the commenter emphasizing the independent nature of the failure modes.

Request To Revise the Statement of Requirements

Gulfstream requested that the statement of requirements in the **SUMMARY** section of the NPRM (77 FR 75908, December 26, 2012) be revised. Gulfstream proposed to revise the wording to read, ''This proposed AD would require doing an inspection to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number with a later part number, and revising the airplane maintenance program to include revised instructions for continued airworthiness for airplanes with the later pump part number installed.'' Gulfstream stated that the rewording increases the content clarity in the NPRM.

We disagree with Gulfstream's request to refer to ''later part numbers'' because this language lacks clarity. This final rule requires specific part number replacements. Therefore, we would need to use specific part numbers to identify replacement parts. In addition, the intent of the **SUMMARY** section is to provide a brief explanation of the unsafe condition and corrective actions; therefore, we do not find it appropriate to include details regarding specific part numbers. We have not changed this final rule in this regard.

Request To Revise the Discussion Paragraph of the NPRM (77 FR 75908, December 26, 2012)

Gulfstream requested that the Discussion paragraph of the NPRM (77 FR 75908, December 26, 2012) be revised. Gulfstream proposed revising the wording to add, ''Additionally, on one other fuel pump component, a

damaged o-ring between the 'wet' and 'dry' cavities of the boost pump resulted in fuel ingress into the dry cavity and outside of the fuel pump via the electrical pigtail.'' Gulfstream stated that the rewording clarifies that the component referred to is a fuel pump, and that there is one recorded incident; also additional information related to the discovery of the incident is provided.

We agree that the wording suggested by Gulfstream clarifies the Discussion paragraph of the NPRM (77 FR 75908, December 26, 2012), which was drawn entirely from paragraph I.B. ''Reason,'' of Gulfstream V Customer Bulletin 197, dated April 11, 2012; and Gulfstream G550 Customer Bulletin 122, dated April 11, 2012. However, that portion of the Discussion paragraph is not carried over into this final rule; therefore, no change is necessary to this final rule in this regard.

Request To Revise the Unsafe Condition

Gulfstream requested that the unsafe condition identified in the NPRM (77 FR 75908, December 26, 2012) be revised. Gulfstream proposed to revise the wording to read, ''If not corrected, the issue of the fuel leakage in combination with the capacitor clearance issue could result in an uncontrolled fire in the wheel well.'' Gulfstream stated that the revised description is consistent with the field experience of independent failure types.

We agree with Gulfstream's request since the rewording provides more clarity of the unsafe condition. We have revised the **SUMMARY** section, the Discussion paragraph, and paragraph (e) of this final rule to state that fuel leakage in combination with a capacitor clearance issue could result in an uncontrolled fire in the wheel well.

Request To Change the Title of Certain Service Information

Gulfstream requested that we change the title of certain service information in the NPRM (77 FR 75908, December 26, 2012). Gulfstream stated that the correct title for the Gulfstream service information should be referred to as ''customer bulletins.'' Gulfstream also stated that the Model GV–SP airplanes include G500 and G550 airplane types, so a G500 Customer Bulletin reference should be added.

We acknowledge Gulfstream's request to correct citations for certain service information. We agree that the referenced bulletins should be referred to as ''customer'' bulletins; we have revised document citations throughout this final rule accordingly. However, although we agree that G500 and G550 airplanes are both included in the Model GV–SP designation, we do not agree to add a reference to a customer bulletin for G500 airplanes because doing so violates Office of the Federal Register (OFR) regulations for approval of materials ''incorporated by reference'' in rules. (See 1 CFR 51.1(f).) In general terms, we may not include elements in a document citation that are not clearly specified on the document. Therefore, although we agree that Gulfstream G550 Customer Bulletin 122, dated April 11, 2012, also applies to G500 airplanes, we do not agree to revise the document citation in this regard.

Request To Clarify the Differences Between the Proposed AD and the Service Information Paragraph of the NPRM (77 FR 75908, December 26, 2012)

Gulfstream requested clarification of the Differences Between the Proposed AD and the Service Information paragraph of the NPRM (77 FR 75908, December 26, 2012) to highlight that the proposed 36-month compliance time will result in a slightly later completion date than the compliance time specified in referenced Gulfstream customer bulletins, and that the compliance time in the proposed AD takes precedence over that of the referenced Gulfstream customer bulletins. Gulfstream stated that it acknowledges a difference in compliance time, but stated that the NPRM does not provide an explanation on the effect on the completion date.

We partially agree with Gulfstream's request. We agree that this AD has a slightly different compliance time than that provided in the service information. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the actions in this AD, while still maintaining an adequate level of safety. We arrived at the compliance time with the manufacturer's concurrence. In addition, the Differences Between the Proposed AD and the Service Information paragraph of the NPRM (77 FR 75908, December 26, 2012) is not restated in this final rule. We have not changed this final rule in this regard.

Request To Clarify Certain Part Numbers

Gulfstream requested that the part numbers in the NPRM (77 FR 75908, December 26, 2012) be clarified. Gulfstream stated that the word ''Gulfstream'' should be added in front of P/N 1159SCP500–5 and P/N 1159SCP500–7 since the fuel pumps also contain GE part numbers.

We agree with Gulfstream's request. When referencing P/N 1159SCP500–5 and P/N 1159SCP500–7, we have added the word ''Gulfstream'' in front of the part number in paragraphs (g), (h), and (i) of this AD.

Request To Change the Compliance Time

Gulfstream requested that we change the compliance time in paragraph (h) of the NPRM (77 FR 75908, December 26, 2012). Gulfstream proposed to revise the compliance time for the replacement of the fuel boost pump from ''before further flight'' to ''within 36 months after the effective date of this AD.''

Gulfstream stated that approximately 2,250 fuel pumps having Gulfstream P/N 11598SCP500–5 require an upgrade to Gulfstream P/N 1159SCP500–7. Gulfstream stated that there are a limited number of ''seed'' fuel pumps to support this effort. Gulfstream stated that the Gulfstream-managed program matches customer airplane availability with supplier shop loading and seed unit availability, which allows for an upgrade of all affected fuel boost pumps within a 42-month committed timeframe without undue burden onto operators in terms of aircraft downtime and missed trips. In addition, Gulfstream stated that a risk assessment was presented to the FAA in 2010 that supported a change-out interval of 48 months through a Gulfstream-managed program starting in October 2011. Gulfstream stated that, based on the risk assessment, Gulfstream V Customer Bulletin 197, dated April 11, 2012 (for Model GV airplanes); and Gulfstream G550 Customer Bulletin 122, dated April 11, 2012 (for Model GV–SP airplanes); were issued to recommend replacement of certain fuel pumps within 42 months since issuance of the service information.

Gulfstream stated that its proposed change to the compliance time is consistent with the risk assessment, the intent of the managed program, and the wording of the Gulfstream and supplier service information. Gulfstream stated that, in contrast, the requirement to change out Gulfstream P/N 11598SCP500–5 before the next flight is unnecessary according to the Gulfstream risk assessment, and has the potential to severely affect the Gulfstream-managed program, since needed planning information will not be available to Gulfstream.

We agree with Gulfstream's request to revise the compliance time in paragraph (h) of this final rule to 36 months for the reasons provided by the commenter. We have revised paragraph (h) of this AD accordingly.

Request To Revise Compliance Time for Leak Check Inspection

Gulfstream requested we revise paragraph (i)(2) of the NPRM (77 FR 75908, December 26, 2012) to require the initial inspection before 500 flight hours have elapsed since installation of the Gulfstream P/N 1159SCP500–7 pump, or before further flight if 500 flight hours have elapsed since installation of the Gulfstream 1159SCP500–7 pump and an initial fuel leak inspection has not been accomplished.

Gulfstream stated that the inspection referred to in paragraph (g) of the NPRM (77 FR 75908, December 26, 2012) determines the part number of the fuel boost pump; therefore, a requirement for a leak check inspection before further flight is inconsistent with the FAA-accepted Instructions for Continued Airworthiness, and is only required if the initial inspection interval of 500 flight hours has been exceeded since installation of the Gulfstream P/N 1159SCP500–7 standard pump and an initial leak check inspection has not been accomplished.

We partially agree with the commenter's request. We agree that mandating the leak check inspection at the same time as the part number inspection could cause the leak check to be done before 500 flight hours has elapsed since the installation of the Gulfstream P/N 1159SCP500–7 pump, because the Gulfstream P/N 1159SCP500–7 installation might have just recently been done. However, we disagree with changing the AD in this regard because the simplicity of the leak check, in addition to the airplane already being under inspection in the area, places minimal burden on the operator. We have not changed this AD in this regard.

Request To Revise Parts Installation Prohibition

Gulfstream requested we revise paragraph (k) of the NPRM (77 FR 75908, December 26, 2012) to prohibit replacing a fuel boost pump having Gulfstream P/N 1159SCP500–7 with a fuel boost pump having Gulfstream P/N 1159SCP500–5. Gulfstream stated that this is to allow a fuel boost pump having Gulfstream P/N 1159SCP500–5 to be replaced by a fuel boost pump of the same part number within 36 months after the effective date of the AD, if a Gulfstream P/N 1159SCP500–7 pump is not available, and to require that any Gulfstream P/N 1159SCP500–5 pumps installed for that reason must be replaced with a Gulfstream P/N 1159SCP500–7 pump within 36 months after the effective date of the AD.

Gulfstream stated that its risk assessment supports a replacement at intervals of 48 months from April 2012, and remains unaffected if a Gulfstream P/N 1159SCP500–5 pump is replaced with a Gulfstream P/N 1159SCP500–5 pump, since the total number of Gulfstream P/N 1159SCP500–5 pumps in service at any time is unchanged. Gulfstream stated that its request is intended to avoid a situation where an airplane is grounded because a Gulfstream P/N 1159SCP500–5 pump requires replacement for cause and a Gulfstream P/N 1159SCP500–7 pump is unavailable, but a Gulfstream P/N 1159SCP500–5 is available.

We disagree with Gulfstream's request to revise paragraph (k) of this AD. In cases where a part is known to be unairworthy, such as when it creates an unsafe condition, we might determine that, as of the effective date of the AD, such a part is not allowed to be installed on an airplane. ''Parts Installation Prohibition'' paragraphs (like paragraph (k) of this AD) are intended to prevent an operator from knowingly installing an unairworthy part on an airplane.

We based the compliance time of 36 months specified in paragraph (g) of this AD on a risk assessment of the Gulfstream Aerospace Corporation Model GV and GV–SP fleet performed in August 2010. The risk assessment did not consider the possibility that additional fuel boost pumps with Gulfstream P/N 1159SCP500–5 would be introduced into the fleet during the 36-month compliance time. Therefore, we determined that the ''Parts Installation Prohibition'' paragraph must prohibit installation of the affected part as of the effective date of this AD. We have not changed this AD in this regard. However, under the provisions of paragraph (l) of this AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

We reviewed the relevant data, considered 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 minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 75908, December 26, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 75908, December 26, 2012).

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 357 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
Inspection to determine if a certain part number is installed.	1 work-hour × $85 per hour = $85	$0	$85	$30,345
Maintenance program revision	1 work-hour × $85 per hour = $85	0	85	30,345

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COST

Action	Labor cost	Parts cost	Cost per product
Replacement	24 work-hours × $85 per hour = $2,040	$7,600	$9,640

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

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 adding the following new airworthiness directive (AD):

2013–22–19 Gulfstream Aerospace Corporation: Amendment 39–17651; Docket No. FAA–2012–1313; Directorate Identifier 2012–NM–080–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 2822, Fuel boost pump.

(e) Unsafe Condition

This AD was prompted by reports of two independent types of failure of the fuel boost pump with overheat damage found on the internal components and external housing on one of the failure types, and fuel leakage on the other. We are issuing this AD to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

(f) Compliance

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

(g) Inspection To Determine the Part Number (P/N)

Within 36 months after the effective date of this AD, inspect the fuel boost pumps to determine whether Gulfstream P/N 1159SCP500–5 is installed, in accordance with the Accomplishment Instructions of Gulfstream V Customer Bulletin 197, dated April 11, 2012, including the service information specified in paragraphs (g)(1) and (g)(2) of this AD (for Model GV airplanes); or Gulfstream G550 Customer Bulletin 122, dated April 11, 2012, including the service information specified in paragraphs (g)(1) and (g)(2) of this AD (for Model GV–SP airplanes). A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the fuel boost pumps can be conclusively determined from that review.

(1) Triumph Aerostructures Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011.

(2) GE Service Bulletin 31760–28–100, dated February 15, 2011.

(h) Replacement

If the inspection required by paragraph (g) of this AD reveals a fuel boost pump with Gulfstream P/N 1159SCP500–5: Within 36 months after the effective date of this AD, replace the fuel boost pump with a serviceable pump having Gulfstream P/N 1159SCP500–7, in accordance with the Accomplishment Instructions of Gulfstream V Customer Bulletin 197, dated April 11, 2012, including the service information specified in paragraphs (h)(1) and (h)(2) of this AD (for Model GV airplanes); or Gulfstream G550 Customer Bulletin 122, dated April 11, 2012, including the service information specified in paragraphs (h)(1) and (h)(2) of this AD (for Model GV–SP airplanes).

(1) Triumph Aerostructures Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011.

(2) GE Service Bulletin 31760–28–100, dated February 15, 2011.

(i) Maintenance Program Revision

Within 500 flight hours after the effective date of this AD, revise the airplane maintenance program to include Gulfstream Document GV–GER–0003, Instructions for Continued Airworthiness, Fuel Boost Pump with Leak Check Port, dated November 24, 2010.

(1) For airplanes on which fuel boost pump Gulfstream P/N 1159SCP500–5 has been replaced in accordance with paragraph (h) of this AD: The initial compliance time for the inspection is within 500 flight hours after doing the replacement specified in paragraph (h) of this AD.

(2) For airplanes on which the inspection required by paragraph (g) of this AD reveals that a fuel boost pump with Gulfstream P/N 1159SCP500–7 has been installed: After revising the airplane maintenance program, as required by paragraph (i) of this AD, the initial inspection is required before further flight after doing the inspection required by paragraph (g) of this AD.

(j) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (l) of this AD.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install a fuel boost pump having

Gulfstream P/N 1159SCP500–5 on any airplane.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 paragraph (m) of this AD.

(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.

(m) Related Information

For more information about this AD, contact Darby Mirocha, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5573; fax: (404) 474–5606; email: *darby.mirocha@faa.gov.*

(n) 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) Gulfstream V Customer Bulletin 197, dated April 11, 2012.

(ii) Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(iii) Triumph Service Bulletin SB–TAGV/ GVSP–28–JG0162, dated August 30, 2011.

(iv) General Electric Service Bulletin 31760–28–100, dated February 15, 2011.

(v) Gulfstream Document GV–GER–0003, Instructions for Continued Airworthiness, Fuel Boost Pump with Leak Check Port, dated November 24, 2010.

(3) For Gulfstream, Triumph Aerostructures, and General Electric Aviation service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com*; Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. 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 October 25, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28860 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1317; Directorate Identifier 2011–NM–194–AD; Amendment 39–17687; AD 2013–24–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes. This AD was prompted by a report that the seat track attachment of body station 520 flexible joint is structurally deficient in resisting a 9g forward emergency load condition in certain seating configurations. This AD requires replacing the pivot link assembly on certain seats, modifying the existing seat track link assembly fastener on certain seats, or replacing the seat track link assemblies on certain seats. Also, for certain airplanes, this AD requires installing a new seat track link assembly or modifying the seat track link assembly. For certain other airplanes, this AD requires inspecting, changing, or repairing the seat track link assembly. We are issuing this AD to prevent seat detachment in an emergency landing, which could cause injury to occupants of the passenger compartment and affect emergency egress.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 7, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Sarah Piccola, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6483; fax: 425–917–6590; email: *sarah.piccola@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on January 16, 2013 (78 FR 3365). The NPRM proposed to require replacing the pivot link assembly on certain seats, and modifying or replacing the seat track link assemblies on certain seats. Also, for certain airplanes, the NPRM proposed to require installing a new seat track link assembly.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 3365, January 16, 2013) and the FAA's response to each comment.

Request To Incorporate Revised Service Information

Boeing concurred with the content of the NPRM (78 FR 3365, January 16, 2013), but requested that we incorporate Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013, in the AD. Boeing stated that due to manufacturing differences,

some operators were unable to modify or replace the seat track link assembly using Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007. Boeing also requested that we allow credit for actions done in accordance with Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007.

We agree to incorporate Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013, in this final rule, which gives an option for operators to modify the seat track link assembly. References have been revised in paragraphs (c)(1), (g)(2), (g)(3), and (i) of this final rule accordingly. (Paragraph (i) of this final rule was referred to as paragraph (h) in the NPRM (78 FR 3365, January 16, 2013).) A new paragraph (h) has been added to this final rule to include the optional modification. We also have added paragraph (j)(2) to this final rule to provide credit for certain actions performed before the effective date of this final rule using Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007.

In addition, Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013, includes new Group 6 (i.e., certain airplanes previously in Group 1 and Group 5, as identified in Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007). For airplanes in Group 6, we added paragraph (g)(3) to this final rule to provide instructions to contact the FAA for inspection, change, and repair of the seat track link assembly because we have determined that there are unique aspects of these airplanes that require specific instructions for correcting the unsafe condition. Also, paragraph (g)(2) of this final rule has been revised to clarify the applicable groups. New paragraph (g)(4) has been added to this final rule to clarify the requirements for airplanes in Group 5. Subsequent paragraph identifiers have been revised accordingly.

Request for Credit for Certain Actions

Delta, Alaska Airlines, WestJet, and Saudi Aramco requested that we provide credit for actions performed prior to the effective date of the AD using Boeing Service Bulletin 737–53–1244, dated April 17, 2003; Revision 1, dated May 29, 2003; Revision 2, dated March 15, 2007; and Revision 3, dated December 4, 2008. The commenters stated that Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011, specifies that no more work is necessary on airplanes changed in accordance with Boeing Service Bulletin 737–53–1244, dated April 17, 2003; Revision 1, dated May 29, 2003; Revision 2, dated March 15, 2007; and Revision 3, dated December 4, 2008.

We agree to provide credit for actions performed prior to the effective date of the final rule using Boeing Service Bulletin 737–53–1244, dated April 17, 2003; Revision 1, dated May 29, 2003; Revision 2, dated March 15, 2007; and Revision 3, dated December 4, 2008. We have added a new paragraph (j)(1) to this final rule accordingly. Subsequent paragraph identifiers have been revised accordingly.

Request To Correct Compliance Table 1 of Boeing Service Bulletin 737–53–1244, Revision 5, Dated July 27, 2011

Alaska Airlines requested that we correct Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011, which refers to Boeing Service Bulletin 737–53–1244, dated April 17, 2003; and Revision 4, dated April 6, 2011 (which was withdrawn by Boeing).

We partially agree with the request. We agree that the ''Optional Actions'' column of Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011, refers to Boeing Service Bulletin 737–53–1244, dated April 17, 2003; and Revision 4, dated April 6, 2011. However, this final rule does not require that action. This final rule requires, among other actions, installation of the new, improved pivot link within 60 months after the effective date of this AD, which is identified in the ''Follow On Actions'' column of Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011. No change has been made to this final rule in this regard.

Request for Clarification of Damage Tolerance Inspections Statement

Alaska Airlines requested that we clarify the NPRM (78 FR 3365, January 16, 2013) by adding a statement regarding the damage tolerance inspections. Alaska Airlines stated that Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2012, includes a damage tolerance inspection statement; however, Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007, does not include the statement. The commenter requested that we add a statement to the NPRM indicating that no damage tolerance inspections are required as a result of rework using either service bulletin.

We agree that the damage tolerance inspection statement was not included in Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007; however, the statement is included in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013, which is cited in this final rule. No change has been made to this final rule in this regard.

Conclusion

We reviewed the relevant data, considered 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 minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 3365, January 16, 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 3365, January 16, 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 1,281 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	U.S. Airplanes	Cost on U.S. operators
Replacement or modification	Up to 41 work-hours × $85 per hour = $3,485.	Up to $15,478	Up to $18,963	1,281	Up to $24,291,603.
Concurrent installation or modification (Groups 1, 2, 4, and 5 airplanes).	Up to 60 work-hours × $85 per hour = $5,100.	Up to $18,089	Up to $23,189	214	Up to $4,962,446.

We have received no definitive data that would enable us to provide a cost estimate for the actions required for airplanes in Group 6 identified in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013.

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

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 adding the following new airworthiness directive (AD):

2013–24–13 The Boeing Company: Amendment 39–17687; Docket No. FAA–2012–1317; Directorate Identifier 2011–NM–194–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013.

(2) The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, as identified in Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011.

(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 that a Boeing study found that the seat track attachment of body station 520 flexible joint is structurally deficient in resisting a 9g forward emergency load condition in certain seating configurations. We are issuing this AD to prevent seat detachment in an emergency landing, which could cause injury to occupants of the passenger compartment and affect emergency egress.

(f) Compliance

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

(g) Repair or Replacement of Seat Track Link Assembly or Seat Track Link Assembly Fastener

Within 60 months after the effective date of this AD, do the actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, as applicable.

(1) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Install new, improved pivot link assemblies, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011.

(2) For airplanes in Groups 1, 2, 3, and 4, as identified in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013: Replace the seat track link assembly, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013.

(3) For airplanes in Group 6, as identified in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013: Inspect, change, or repair the seat track link assembly, as applicable, using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(4) For airplanes in Group 5, as identified in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013: Modify the existing seat track link assembly fastener, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013.

(h) Optional Modification of Seat Track Link Assembly

In lieu of the replacement specified in paragraph (g)(2) of this AD, doing the optional modification of the seat track link assembly, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013, is acceptable for compliance with the requirements of paragraph (g)(2) of this AD, provided the modification is done within the compliance time specified in the introductory text of paragraph (g) of this AD.

(i) Concurrent Actions

For airplanes in Groups 1, 2, 4, and 5, as identified in Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013: Before or concurrently with the accomplishment of the actions specified in paragraph (g)(2) or (g)(3) of this AD, install a new seat track link assembly or modify the seat track link assembly, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1120, Revision 1, dated May 13, 1993.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of the AD using Boeing Service Bulletin 737–53–1244, dated April 17, 2003; Revision 1, dated May 29, 2003; Revision 2, dated March 15, 2007; or Revision 3, dated December 4, 2008; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraphs (g)(2) and (g)(4) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–53–1260, dated May 7, 2007, which is not incorporated by reference in this AD.

(k) 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 paragraph (l) 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 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Sarah Piccola, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6483; fax: 425–917–6590; email: *sarah.piccola@faa.gov.*

(2) Service information that is referenced in this AD but is not incorporated by reference may be obtained at the addresses identified in paragraphs (m)(3) and (m)(4) of this AD.

(m) 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) Boeing Service Bulletin 737–53–1120, Revision 1, dated May 13, 1993.

(ii) Boeing Service Bulletin 737–53–1244, Revision 5, dated July 27, 2011.

(iii) Boeing Special Attention Service Bulletin 737–53–1260, Revision 1, dated May 23, 2013.

(3) 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.*

(4) 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.

(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 November 19, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28752 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0420; Directorate Identifier 2011–NM–241–AD; Amendment 39–17685; AD 2013–24–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This AD was prompted by a report of a disbonded doubler and a skin crack in section 41 of the fuselage, and multiple reports of cracked or missing fastener heads. This AD requires repetitive inspections for cracking of the fuselage skin, discrepant fasteners, and for disbonds at the doublers; and related investigative and corrective actions if necessary. For certain airplanes, this AD also requires a terminating repair for repair doublers. We are issuing this AD to prevent rapid decompression and loss of structural integrity of the airplane due to such disbonding and subsequent cracking of the skin panels.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 7, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on May 16, 2013 (78 FR 28767). The NPRM proposed to require repetitive inspections for cracking of the fuselage skin, discrepant fasteners, and for disbonds at the doublers; and related investigative and corrective actions if necessary. For certain airplanes, the NPRM also proposed to require a terminating repair for repair doublers.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 28767, May 16, 2013) and the FAA's response to each comment.

Request To Add Terminating Action for Other AD Actions

Boeing requested that we include the requirements of paragraph (h) of AD 2006–24–05, Amendment 39–14834 (76 FR 68434, November 27, 2006), in paragraph (k)(3) of the NPRM (78 FR 28767, May 16, 2013), which specifies that accomplishing the required actions proposed by the NPRM terminates certain requirements of AD 2006–24–05. Boeing stated that including the requirements of paragraph (h) of AD 2006–24–05 in paragraph (k) of the NPRM would then be consistent with paragraph (k)(2) of the NPRM that

includes paragraph (l) of AD 2006–24–02.

We do not agree with the commenter's request. Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, which is the referenced service information in this final rule, is an alternative method of compliance (AMOC) for the three ADs specified in paragraph (k) of this final rule for only the corresponding paragraphs of those ADs that are listed in paragraphs (k)(1), (k)(2), and (k)(3) of this final rule. Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, does not list paragraph (h) of AD 2006–24–05, Amendment 39–14834 (76 FR 68434, November 27, 2006), as one of the paragraphs for which the service information is a method of compliance. We have not changed this final rule in this regard.

Request To Revise the Compliance Time

Delta Airlines (DAL) requested that we revise the compliance time to make it more feasible for an operator to accomplish the actions in the NPRM (78 FR 28767, May 16, 2013). DAL stated that certain affected DAL airplanes will require inspections within 150 flight cycles after the effective date of the final rule. DAL also stated that current usage of the affected DAL airplanes is approximately 500 to 540 flight cycles per year and, therefore, the 150-flight-cycle compliance time would require ''special visits to complete.''

We do not agree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this final rule, we considered the urgency associated with the identified unsafe condition and the manufacturer's recommendations. Disbonded doublers, skin cracking, and cracked or missing fastener heads are a significant safety issue, and we have determined that the inspection compliance times are warranted. The commenter provided no technical justification for revising the inspection thresholds. However, under the provisions of paragraph (l) of this final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the extension would provide an acceptable level of safety. We have not changed this final rule in this regard.

Request To Expand Work-Hour Break-Outs

DAL requested that we break out the work-hours identified in paragraph G. (Manpower) of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, by zones and conditions that will ultimately assist the operators in scheduling each unique condition. DAL stated that the compliance times in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, are broken out by Zone 1 and Zone 2, and can occur at different times depending on each resulting condition.

We do not agree with the commenter's request. The stated costs in ADs must address all actions mandated by the AD. The hours described in paragraph G. (Manpower) of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, are an estimate of the total hours to perform the actions. This final rule includes the work-hours specified in Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012. These actions are not intended to be broken out to a task-by-task level. We have not changed this final rule in this regard.

Request To Revise AD 2006–24–02, Amendment 39–14831 (71 FR 67445, November 22, 2006)

DAL requested that we support an expedited revision to AD 2006–24–02, Amendment 39–14831 (71 FR 67445, November 22, 2006), prior to issuance of this final rule. DAL stated that according to a recent customer support presentation of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, Boeing is currently working on a revision to this service bulletin, which may relax some compliance times.

We do not agree with the commenter's request. We have not received Revision 3 to Boeing Service Bulletin 747–53A2747 to review. We have determined that this final rule must not be delayed for issuance of a new revision to Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, since we have determined that an unsafe condition exists and that inspections in this final rule must be conducted to ensure continued safety. When Revision 3 of Boeing Service Bulletin 747–53A2747 is submitted, we will review and evaluate it as an alternative method of compliance to this final rule and determine if additional rulemaking is necessary. We have not changed this final rule in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 28767, May 16, 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 28767, May 16, 2013).

Costs of Compliance

We estimate that this AD affects 98 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
Inspections	878 work-hours × $85 per hour = $74,630 per inspection cycle.	$0	$74,630 per inspection cycle	$7,313,740 per inspection cycle.

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

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 adding the following new airworthiness directive (AD):

2013–24–11 The Boeing Company: Amendment 39–17685; Docket No. FAA–2013–0420; Directorate Identifier 2011–NM–241–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

This AD affects AD 2006–20–02, Amendment 39–14771 (71 FR 56861, September 28, 2006); AD 2006–24–02, Amendment 39–14831 (71 FR 67445, November 22, 2006); and AD 2006–24–05, Amendment 39–14834 (71 FR 68434, November 27, 2006).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; as identified in Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012.

(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 disbonded doubler and a skin crack in section 41 of the fuselage, and multiple reports of cracked or missing fastener heads. We are issuing this AD to prevent rapid decompression and loss of structural integrity of the airplane due to such disbonding and subsequent cracking of the skin panels.

(f) Compliance

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

(g) Repetitive Skin Panel, Fastener, and Doubler Inspections

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, except as required by paragraphs (i)(1) and (i)(3) of this AD: Do the applicable inspections (including detailed, high frequency eddy current (HFEC), and low frequency eddy current (LFEC)) for any cracking of the fuselage skin, for discrepant fasteners, and for disbonds at the doublers; and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, except as provided by paragraph (i)(2) of this AD. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012. Do all applicable related investigative and corrective actions at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012. Options provided in Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2011, for accomplishing the disbond inspection are acceptable for the corresponding requirements of this paragraph provided that the inspection is done at the applicable times in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2011.

(1) Replacing a skin panel, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, is an acceptable alternative to doing the structural repair manual (SRM) skin panel repairs and the repetitive skin panel inspections specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, for only the skin panel that has been replaced.

(2) Accomplishment of the terminating repair identified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, terminates the repetitive inspections identified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, for only the area on which the terminating repair has been done.

(h) Terminating Action

For airplanes identified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012: At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, do the terminating action for the repair doubler, including doing an open hole HFEC inspection for skin cracks at the fastener holes common to the inspection area and an inspection for disbond of the internal doubler; and as applicable, replacing the existing external repair doubler with a new extended external repair doubler, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, except as provided by paragraph (i)(2) of this AD. Accomplishment of the terminating action identified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, terminates the repetitive inspections identified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, for only areas on which the terminating action has been done.

(i) Exceptions to Certain Service Information Instructions

This paragraph specifies exceptions to certain instructions in Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012.

(1) Where Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, specifies a compliance time after the ''original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, specifies to contact Boeing for special repair instructions, this AD requires using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(3) The Condition column of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012, refers to certain

conditions ''as of the original issue date of this service bulletin.'' This AD, however, applies to the airplanes with the specified condition as of the effective date of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2747, Revision 1, dated October 12, 2011, which is not incorporated by reference in this AD.

(k) Terminating Action for Other ADs

(1) Accomplishing the requirements of this AD terminates the requirements of paragraphs (f), (g), and (h) of AD 2006–20–02, Amendment 39–14771 (71 FR 56861, September 28, 2006).

(2) Accomplishing the requirements of this AD terminates the requirements of paragraphs (f), (k), and (l) of AD 2006–24–02, Amendment 39–14831 (71 FR 67445, November 22, 2006).

(3) Accomplishing the requirements of this AD terminates the requirements of paragraphs (f) and (i) of AD 2006–24–05, Amendment 39–14834 (71 FR 68434, November 27, 2006).

(l) 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 paragraph (m)(1) 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.

(m) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) 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) Boeing Service Bulletin 747–53A2747, Revision 2, dated February 22, 2012.

(ii) Reserved.

(3) 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.*

(4) 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.

(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, WA, on November 15, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28611 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1229; Directorate Identifier 2012–NM–135–AD; Amendment 39–17684; AD 2013–24–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757 and Model 767 airplanes. This AD was prompted by a standby power relay failure and subsequent illumination of the ''STANDBY BUS OFF'' light, which led the flightcrew to set the standby power switch to the ''BAT'' position, isolating the battery and standby buses, disabling the battery charger, and eventually causing the main battery to be depleted. This AD requires doing wiring changes and installing a new air/ground relay to the battery charger system. We are issuing this AD to prevent discharge of the main battery, which could result in multiple system degradation, reduced airplane controllability, and runway excursion upon landing.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 7, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; 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: Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on December 20, 2012 (77 FR 75402). The NPRM proposed to require doing wiring changes and installing a

new air/ground relay to the battery charger system.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 75402, December 20, 2012) and the FAA's response to each comment.

Support for the NPRM (77 FR 75402, December 20, 2012)

The Air Line Pilots Association International (ALPA) stated that it supports the NPRM (77 FR 75402, December 20, 2012).

Boeing stated that it concurs with the contents of the NPRM (77 FR 75402, December 20, 2012).

The National Transportation Safety Board stated that it supports the NPRM (77 FR 75402, December 20, 2012), and that, in conjunction with the procedural changes recommended by the board and implemented by Boeing, the NPRM will provide an additional margin of safety by requiring modifications to the airplane that will allow flightcrews to manage the electrical system more effectively in the event of a relay failure that results in a loss of power to the standby bus.

Request To Mandate Quick Reference Handbook (QRH) Change

ALPA requested we ensure that operators adopt the QRH procedural changes that have been implemented by Boeing. ALPA stated that incorporating the QRH procedural changes would help to ensure that an event similar to the event that prompted the NPRM (77 FR 75402, December 20, 2012) does not occur during the 60-month compliance time.

We partially agree with the commenter's request. We agree that incorporating the QRH change prior to implementing the design change helps mitigate the unsafe condition. We disagree with mandating incorporation of the QRH change. We have evaluated the risk and have determined that accomplishing this final rule within the required compliance time adequately addresses the unsafe condition without the need for any additional interim actions. We have determined this AD action is appropriate based on the probability of occurrence, without requiring that operators incorporate the temporary procedural changes prior to incorporating the required design changes. We have not changed this final rule in this regard.

Request To Specify Alternative Relay Locations

United Airlines (UAL) requested that we specify alternate locations for the new air/ground relay in the P36 panel versus the location specified in Figure 15, Sheet 2, of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012 (which is the service information referenced in the NPRM (77 FR 75402, December 20, 2012)). UAL stated that operators will need to apply for alternative methods of compliance (AMOCs) if they have used the location described in the service information for supplemental type certificate (STC) projects.

We disagree with the commenter's request to specify alternate relay locations. Figure 15, Sheet 2, of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012, already provides a note with regard to the relay installation that states, ''if location is used, the new relay can be installed anywhere on the same row.'' We have not changed this final rule in this regard.

Request To Change Wire Bundle Routing

UAL requested that the wire bundle routing described in Figure 1, Sheet 2, of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012, be moved to a location that is easier to access. UAL stated that bundle routing near diamond ''B'' by station 288 can be very difficult because this is behind the P6 panel, which cannot be moved. UAL suggested that following a path in a bundle more forward would be easier. UAL also stated that removing the G1A galley for access is only feasible in a C-check environment; otherwise the cost is prohibitive.

We disagree with the commenter's request to change the wire bundle routing. Wire bundle W2078 is an existing wire bundle being changed for this modification. The changes to this wire bundle are done near the P5 and P36 panel. Figure 1, of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012, is only meant to show that the bundle is routed to both panels and the P6 panel, but it does not require a modification in that area.

Figures 2 through 8 of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012, show the wiring change. The wire from the P6 panel (W2078–0 150–22) is an existing wire and is only modified near the P5 panel (flag note 8). Furthermore, the G1A galley is only removed if it is necessary. Note 5 of section 3.A., General Information, of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012, states that, ''If it is necessary to remove more parts for access, you can remove those parts. If you can get access without removing identified parts, it is not necessary to remove all of the identified parts. Jacking and shoring limitations must be observed.'' Therefore, operators can remove other items if it is easier for them.

Finally, in developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations and the practical aspect of accomplishing the actions within an interval of time that corresponds to typical scheduled maintenance for affected operators. We have determined that a 60-month compliance time will ensure an acceptable level of safety and allow the modifications to be done during scheduled maintenance intervals for most affected operators. Also, the Boeing service information cited in the NPRM (77 FR 75402, December 20, 2012), has been available to operators since June 2012; therefore, operators have had ample time to consider initiating those actions that this final rule requires. We have not changed this final rule in this regard.

Statement of STC Effect on Applicability

Aviation Partners Boeing stated that the installation of winglets per STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) or STC ST01518SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/48e13cdfbbc32cf4862576a4005d308b/$FILE/ST01518SE.pdf*) do not affect the accomplishment of the manufacturer's service instructions.

We have added new paragraph (c)(3) to this final rule to state that installation of STC ST01920SE or STC ST01518SE does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST01920SE or STC ST01518SE is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the

public interest require adopting this AD with the change described previously and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM (77 FR 75402, December 20, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 75402, December 20, 2012).

Costs of Compliance

We estimate that this AD affects 1,085 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
Install new air/ground relay; 674 Model 757 airplanes.	23 work-hours × $85 per hour = $1,955.	Up to $733	Up to $2,688	Up to $1,811,712.
Install new air/ground relay; 411 Model 767 airplanes.	Up to 35 work-hours × $85 per hour = $2,975.	Up to $881	Up to $3,856	Up to $1,584,816.

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

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 adding the following new airworthiness directive (AD):

2013–24–10 The Boeing Company: Amendment 39–17684; Docket No. FAA–2012–1229; Directorate Identifier 2012–NM–135–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 757–200, –200PF, –200CB, and –300 series airplanes, as identified in Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012.

(2) Model 767–200, –300, –300F, and –400ER series airplanes, as identified in Boeing Special Attention Service Bulletin 767–24–0200, Revision 1, dated September 13, 2012.

(3) Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) or STC ST01518SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/48e13cdfbbc32cf4862576a4005d308b/$FILE/ST01518SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE or STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Unsafe Condition

This AD was prompted by a standby power relay failure and subsequent illumination of the ''STANDBY BUS OFF'' light, which led the flightcrew to set the standby power switch to the ''BAT'' position, isolating the battery and standby buses, disabling the battery charger, and eventually causing the main battery to be depleted. We are issuing this AD to prevent discharge of the main battery, which could result in multiple system degradation, reduced airplane controllability, and runway excursion upon landing.

(f) Compliance

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

(g) Installation

Within 60 months after the effective date of this AD: Do wiring changes and install a new air/ground relay to the battery charger system, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012; or Boeing Special Attention Service Bulletin 767–24–0200, Revision 1, dated September 13, 2012; as applicable.

(h) Credit for Previous Actions

(1) For Model 757 airplanes: This paragraph provides credit for the actions required by paragraph (g) of this AD if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–24–0132, dated April 14, 2011, which is not incorporated by reference in this AD.

(2) For Model 767 airplanes: This paragraph provides credit for the actions required by paragraph (g) of this AD if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 767–24–0200, dated April 14, 2011, which is not incorporated by reference, provided that a functional test of the battery charger system is done, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–24–0200, Revision 1, dated September 13, 2012, within 60 months after the effective date of this AD.

(i) 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 paragraph (j)(1) 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.

(j) Related Information

(1) For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) 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) Boeing Special Attention Service Bulletin 757–24–0132, Revision 1, dated June 19, 2012.

(ii) Boeing Special Attention Service Bulletin 767–24–0200, Revision 1, dated September 13, 2012.

(3) 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.*

(4) 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.

(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 November 15, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28441 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0499; Directorate Identifier 2013–NE–20–AD; Amendment 39–17673; AD 2013–23–18]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GE90–110B1 and –115B turbofan engines. This AD was prompted by multiple events of a leaking variable bypass valve (VBV) actuator fuel supply tube. This AD requires replacement of this VBV actuator fuel supply tube with a part eligible for installation. We are issuing this AD to prevent failure of the affected fuel supply tube, fuel leakage, engine fire, and damage to the airplane.

DATES: This AD is effective January 7, 2014.

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: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *jason.yang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on July, 25, 2013 (78 FR 44899, July 25, 2013). The NPRM proposed to require replacement of the affected VBV actuator fuel supply tube, part number 2165M22P01, with a part eligible for installation.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Agreement With the Proposed AD

The Boeing Company and FedEx Express agreed with the AD as proposed.

Request To Change the Compliance Time

GE requested that we change the compliance time in this AD from ''at the next shop visit, after the effective date of this AD'' to ''as soon as possible without effect on revenue service, but before April 1, 2014.'' No justification was provided for the change.

We do not agree. Replacement of the VBV actuator fuel supply tube at the next shop visit maintains an acceptable level of safety for the fleet, based on safety risk analysis. We have no data to support that a more aggressive replacement schedule is required to maintain that acceptable level of safety. We did not change the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

We estimate that this AD will affect about 59 engines installed on airplanes of U.S. registry. We also estimate that it will take about eight hours per engine to replace the VBV actuator fuel supply tube. The cost of this part is about $14,310. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $884,410.

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

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 if justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–23–18 General Electric Company: Amendment 39–17673; Docket No. FAA–2013–0499; Directorate Identifier 2013–NE–20–AD.

(a) Effective Date

This AD is effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GE90–110B1 and –115B turbofan engines with variable bypass valve (VBV) actuator fuel supply tube, part number (P/N) 2165M22P01, installed.

(d) Unsafe Condition

This AD was prompted by multiple events of a leaking VBV actuator fuel supply tube. We are issuing this AD to prevent failure of the affected fuel supply tube, fuel leakage, engine fire, and damage to the airplane.

(e) Compliance

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

(2) At the next shop visit, after the effective date of this AD, replace the VBV actuator fuel supply tube, P/N 2165M22P01, with a part eligible for installation.

(f) Definition

For the purpose of this AD, a shop visit is the induction of an engine into the shop for maintenance or overhaul. The separation of engine flanges solely for the purposes of transporting the engine without subsequent engine maintenance does not constitute an engine shop visit.

(g) Installation Prohibition

After the effective date of this AD, do not install any VBV actuator fuel supply tube, P/N 2165M22P01, onto any engine.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures in 14 CFR 39.19 to make your request.

(i) Related Information

For more information about this AD, contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *jason.yang@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on November 14, 2013.

Frank P. Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 2013–28866 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0812; Directorate Identifier 2013–CE–023–AD; Amendment 39–17689; AD 2013–24–14]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH Models DA40 and DA40F airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue strength found in the aft main spar does not ensure unlimited lifetime structural integrity. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 7, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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 service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43

2622 26780; email: *office@diamond-air.at; Internet: http://www.diamondaircraft.com/contact/technical.php.* 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.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

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. That NPRM was published in the **Federal Register** on September 17, 2013 (78 FR 57104). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Structural fatigue testing of the DA 40 aeroplane carried out for an extension of the Major Structural Inspection (MSI) interval has shown that the fatigue strength of the aft main spar in the cabin area does not ensure unlimited lifetime.
>
> This condition, if not corrected, could adversely affect the structural integrity of the aeroplane.
>
> Diamond Aircraft Industries (DAI) issued Mandatory Service Bulletin (MSB) 40–074/MSB D4–094/MSB F4–028, including Work Instruction (WI) WI–MSB 40–074/WI–MSB D4–094/WI–MSB F4–028 (published as a single document), providing instructions to reinforce the aft main spar in the cabin area.
>
> For the reasons described above, this AD requires modification of the aft main spar in the cabin area.
>
> Note: Aeroplanes with modified aft main spar are eligible for an increased MSI threshold of 6000 flight hours (FH) since first flight of the aeroplane and increased MSI intervals not to exceed 4000 FH thereafter.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0812-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 57104, September 17, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 57104, September 17, 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 57104, September 17, 2013).

Costs of Compliance

We estimate that this AD will affect 747 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $455,670, or $610 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 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.

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 the NPRM, 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.

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:

2013–24–14 Diamond Aircraft Industries GmbH: Amendment 39–17689; Docket No. FAA–2013–0812; Directorate Identifier 2013–CE–023–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Diamond Aircraft Industries Model DA 40 airplanes, serial numbers 40.006 through 40.009, 40.011 through 40.1071, and 40.1073 through 40.1077; and Model DA 40 F airplanes, serial numbers 40.FC001 through 40.FC029; certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57: Wings.

(e) Reason

This AD was prompted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI

describes the unsafe condition as fatigue strength found in the aft main spar does not ensure unlimited lifetime structural integrity. We are issuing this AD to modify the aft main spar in the cabin area to ensure the structural integrity of the airplane.

(f) Actions and Compliance

Unless already done, at or before the next Major Structural Inspection (MSI) after the effective date of this AD or within the next 114 months after January 7, 2014 (the effective date of this AD), whichever occurs first, modify the aft main spar in the cabin area following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI–MSB 40–074, WI–MSB D4–094, and WI–MSB F4–028 (co-published as a single document), dated May 10, 2013, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletins (MSB) 40–074, D4–094, and F4–028 (co-published as a single document), dated May 10, 2013.

(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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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), which is the Technical Agent for the Member States of the European Community, EASA AD No.: 2013–0145, dated July 15, 2013, for more information. You may examine the AD on the Internet at *http://www.regulations.gov* by searching and locating it in Docket No. FAA–2013–0812.

(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) Diamond Aircraft Industries GmbH Mandatory Service Bulletin 40–074, dated May 10, 2013.

(ii) Diamond Aircraft Industries GmbH Mandatory Service Bulletin D4–094, dated May 10, 2013.

(iii) Diamond Aircraft Industries GmbH Mandatory Service Bulletin F4–028, dated May 10, 2013.

Note 1 to paragraphs (i)(2)(i) through (i)(2)(iii) of this AD: Diamond Aircraft Industries GmbH Mandatory Service Bulletin 40–074, dated May 10, 2013; Diamond Aircraft Industries GmbH Mandatory Service Bulletin D4–094, dated May 10, 2013; Diamond Aircraft Industries GmbH Mandatory Service Bulletin F4–028, dated May 10, 2013; are co-published as one document.

(iv) Diamond Aircraft Industries GmbH Work Instruction WI–MSB 40–074, dated May 10, 2013.

(v) Diamond Aircraft Industries GmbH Work Instruction WI–MSB D4–094, dated May 10, 2013.

(vi) Diamond Aircraft Industries GmbH Work Instruction WI–MSB F4–028, dated May 10, 2013.

Note 2 to paragraphs (i)(2)(iv) through (i)(2)(vi) of this AD: Diamond Aircraft Industries GmbH Work Instruction WI–MSB 40–074; Diamond Aircraft Industries GmbH Work Instruction WI–MSB F4–028; dated May 10, 2013; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB F4–028 dated May 10, 2013; are co-published as one document.

(3) For Diamond Aircraft Industries service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamondaircraft.com/contact/technical.php.*

(4) You may view this 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 November 22, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28746 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 301, 303

RIN 0625–AB00

[Docket No.: 131114957–3957–01]

Import Administration; Change of Agency Name for Instruments and Apparatus for Educational and Scientific Institutions

AGENCY: Import Administration, Commerce.

ACTION: Final rule; Nomenclature change.

SUMMARY: Effective October 1, 2013, the Department of Commerce (Department), through internal department organizational orders, changed the name of ''Import Administration'' to ''Enforcement and Compliance.'' The rule also sets forth a Savings Provision that preserves, under the new name, all actions taken under the name of Import Administration and provides that any references to Import Administration in any document or other communication shall be deemed to be references to Enforcement and Compliance.

DATES: This rule is effective December 2, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Goodyear, Director, Office of Operations Support Enforcement & Compliance, Telephone: (202) 482–5194; Michele D. Lynch, Senior Counsel, Office of Chief Counsel for Trade Enforcement and Compliance, Telephone: (202) 482–2879.

SUPPLEMENTARY INFORMATION:

Background

This rule implements the decision by the Department, through internal Department Organizational Orders 10–3 (effective September 18, 2013) and Department Organizational Order 40–1, (effective September 19, 2013), to consolidate and reorganize certain department organizational functions and revise the name of ''Import Administration'' to ''Enforcement and Compliance.'' The revision more accurately reflects the breadth of the agency's activities with respect to the enforcement of, and compliance with, U.S. trade laws and agreements. Consistent with the consolidation and name change, this rule makes certain changes in parts 301 and 303 of title 15 of the Code of Federal Regulations. Specifically, this rule changes all references to ''Import Administration'' wherever they appear in parts 301 and

303 of title 15, to ''Enforcement and Compliance.''

This rule shall constitute notice that all references to Import Administration in any documents, statements, or other communications, in any form or media, and whether made before, on, or after the effective date of this rule, shall be deemed to be references to Enforcement and Compliance. Any actions undertaken in the name of or on behalf of Import Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of Enforcement and Compliance.

Rulemaking Requirements

1. This final rule has been determined to be exempt from review for purposes of Executive Order 12866.

2. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) are not applicable. Accordingly, this rule is issued in final form.

List of Subjects

15 CFR Part 301

Instruments and apparatus for educational and scientific institutions.

15 CFR Part 303

Watches, Watch movements and jewelry program.

PART 301—INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

■ 1. The authority citation for part 301 continues to read as follows:

Authority: Sec. 6(c), Pub. L. 89–651, 80 Stat. 897, 899; Sec. 2402, Pub. L. 106–36, 113 Stat. 127, 168; 19 U.S.C. 1514(c)(3); and Presidential Proclamation 7011, signed on June 30, 1997.

■ 2. In part 301, revise all references to ''Import Administration'' to read ''Enforcement and Compliance'' and all references to the ''Assistant Secretary for Import Administration'' to read ''Assistant Secretary for Enforcement and Compliance''.

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

■ 1. The authority citation for part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167; Pub. L. 108–429, 118 Stat. 2582.

■ 2. In part 303, revise all references to ''Import Administration'' to read ''Enforcement and Compliance.''

Dated: November 22, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–28912 Filed 12–2–13; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2013–0040]

RIN 0960–AH49

Extension of Expiration Date for Mental Disorders Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration date of the Mental Disorders body system in the Listing of Impairments (listings) in our regulations. We are making no other revisions to this body system in this final rule. This extension will ensure that we continue to have the criteria we need to evaluate mental disorders at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Director, Office of Medical Listings Improvement, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate consideration to the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the date on which the mental disorders body system listings will no longer be effective from January 2, 2014 to January 2, 2015.

We continue to revise and update all of the listings on a regular basis, including those body systems not affected by this final rule.[2] [3] We intend to update the mental disorders body system listings as quickly as possible, but may not be able to publish the final rule revising the listings in this body system by the current expiration date. We published a Notice of Proposed Rulemaking in the **Federal Register** on August 19, 2010, in which we proposed

[1] We also use the listings in the sequential evaluation process we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

[2] 75 FR 51336 (2010). We also recently published a final rule that makes a technical change by replacing the term ''mental retardation'' in our listings and elsewhere in our rules to ''intellectual disability.'' 78 FR 46499 (2013).

[3] Since we last extended the expiration date of some of the listings in June 2012 (77 FR 35264 (2012)), we have published final rules revising the medical criteria for evaluating congenital disorders that affect multiple body systems (78 FR 7659 (2013)), and the medical criteria for evaluating visual disorders in the special senses and speech body system (78 FR 18837 (2013)). We have also published proposed rules that would revise the medical criteria for evaluating genitourinary disorders (78 FR 7695 (2013)) and respiratory system disorders (78 FR 7968 (2013)), and provide criteria for evaluating growth disorders and weight loss in children (78 FR 30249 (2013)).

changes to the Mental Disorders listings. We received comments from 2,243 public commenters. We are drafting a final rule for the listings in this body system that responds to the significant suggestions and concerns raised by the commenters. Many of the claims for disability that we receive involve mental disorders, and a large number of people would be affected by any changes we make to the Mental Disorders listings. We are carefully considering the changes necessary to update these listings before we publish a final rule. Therefore, we are extending the current expiration date for the Mental Disorders body system listings.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the mental disorders body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations [4] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in this body system. Without an extension of the expiration date for these listings, we will not have the criteria we need to assess medical impairments in the mental disorder body system at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

[4] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections, and therefore does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: November 22, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising item 13 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

13. Mental Disorders (12.00 and 112.00): January 2, 2015.

* * * * *

[FR Doc. 2013–28836 Filed 12–2–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 158

[Docket ID: DOD–2009–OS–0029]

RIN 0790–AI48

Operational Contract Support

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule establishes policy, assigns responsibilities, and provides procedures for operational contract support (OCS), including OCS program management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States. This rule was published as an interim final rule on December 29, 2011, to procedurally close gaps and ensure the correct planning, oversight and management of DoD contractors supporting contingency operations, by updating the existing outdated policy. The then existing policies were causing significant confusion, as they did not reflect current practices and legislative mandates. The inconsistencies between local Geographic Command guidance and the DoD-wide policies and the Defense Federal Acquisition Regulations Supplement were confusing for those in the field—in particular, with regard to policy on accountability and visibility requirements.

DATES: This rule is effective January 2, 2014.

FOR FURTHER INFORMATION CONTACT: Shanna Poole, Director, Operational Contract Support Policy, Office of the Deputy Assistance Secretary of Defense (Program Support), (703) 692–3032.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose and Authority of the Regulatory Action

a. *Purpose:* This rule incorporates the latest changes and lessons learned into policy and procedures for OCS,

including OCS program management, contract support integration, and the integration of DoD contractor personnel into contingency operations outside the United States. It was required to procedurally close gaps and ensure the correct planning, oversight and management of DoD contractors supporting contingency operations, by updating outdated policy.

b. *Authority:* Public Law 110–181; Public Law 110–417.

II. Summary of the Major Provisions of the Regulatory Action

The revised policies include:

(1) Incorporation of lessons learned from current operations;

(2) requirements for the development of contractor oversight plans;

(3) requirements for adequate military personnel necessary to execute contract oversight; and,

(4) standards of medical care for deployed contractors.

III. Cost and Benefits

This rule establishes policies and procedures for the oversight and management of contractors supporting contingency operations outside the United States; therefore, there is no cost to the public. Updated and refined policy regarding contractors supporting contingency operations will result in improved management, oversight and efficiency.

Public Comments

On December 29, 2011 (76 FR 81807), the Department published an interim final rule and public comments were solicited. At the end of the comment period, we received comments from two respondents. Neither comment questioned the content of the rule. One commented in part that ''I am happy that your rules would treat contractors with the same respect as other military personnel who are serving in our country's military'' and the other stated ''I agree that this is a necessary rule especially facing our country's current war status.'' Based on these comments, no changes were necessary to the rule itself.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 158 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Section 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 158 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 158 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 158 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by OMB under OMB Control Number 0704–0460, Synchronized Predeployment and Operational Tracker (SPOT) System.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 158 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 158

Armed forces, Government contracts, Health and safety, Military personnel, National defense, Passports and visas, Recordkeeping, Security measures.

For reasons discussed in the preamble, the Department of Defense adopts the interim final rule which was published December 29, 2011 (76 FR 81807), as final without change.

Dated: November 18, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–28867 Filed 12–2–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AO84

Specially Adapted Housing Eligibility for Amyotrophic Lateral Sclerosis Beneficiaries

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulation regarding specially adapted housing (SAH). The amendment authorizes automatic issuance of a certificate of eligibility for SAH to all veterans and active servicemembers with service-connected amyotrophic lateral sclerosis (ALS) rated totally disabling under the VA Schedule for Rating Disabilities. The intent and effect of this amendment are to establish eligibility for SAH for all persons who have service-connected ALS. VA previously amended its Schedule for Rating Disabilities to assign a 100-percent disability evaluation for any veteran who has service-connected ALS based on the recognition that ALS is a rapidly progressive, totally debilitating, and irreversible motor neuron disease that results in muscle weakness leading to a wide range of serious disabilities, including problems with mobility. Because individuals with ALS quickly reach a level of total disability, the change was designed to eliminate the need to repeatedly reevaluate veterans suffering from ALS over a short period of time as symptoms worsen.

Based on that same rationale, this amendment addresses the corresponding eligibility for SAH benefits for veterans and servicemembers with service-connected ALS. The overall SAH grant approval and oversight process is complex and lengthy, with many parts beyond VA's control. This rulemaking streamlines one aspect of the process within VA's control, by establishing SAH eligibility for all veterans or servicemembers with service-connected, totally disabling ALS. By shortening the first stage of the SAH process, this regulatory change will assist veterans and servicemembers suffering from ALS in adapting their

homes before their condition becomes too debilitating. It will also lengthen the period during which ALS-afflicted veterans and servicemembers will be able to utilize the core SAH benefits. VA also makes non-substantive technical amendments for clarity.

DATES: *Effective Date:* This interim final rule is effective December 3, 2013.

Comment Date: Comments must be received by VA on or before February 3, 2014.

Applicability Date: The provisions of this regulatory amendment apply to all applications for SAH pending before VA on or received after December 3, 2013.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO84—Specially Adapted Housing Eligibility for Amyotrophic Lateral Sclerosis Beneficiaries.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Caucutt Li, Section Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 20, 2011 (76 FR 78823), VA amended its regulations pertaining to the percent disability evaluation assignable for service-connected ALS. As of January 19, 2012, the effective date of that amendment, 38 CFR 4.124a, diagnostic code 8017, provides a 100-percent disability evaluation for any veteran who has service-connected ALS. VA determined that assigning a 100-percent evaluation in all cases eliminates the need to unnecessarily reevaluate veterans with ALS repeatedly over a short period of time as the condition worsens and inevitably progresses to total disability. The change was necessary to adequately compensate veterans who suffer from this progressive, untreatable, and fatal disease. However, the change did not specifically address corresponding eligibility for SAH benefits.

Section 2101(a)(1), title 38, United States Code (U.S.C.), authorizes the award of SAH to veterans who are entitled to disability compensation for a ''permanent and total service-connected disability'' meeting any of the criteria specified in section 2101(a)(2)(B). Section 2101A(a) of title 38, U.S.C., authorizes VA to provide the same assistance to a member of the Armed Forces serving on active duty who is suffering from a disability meeting the same requirements if the disability was incurred or aggravated in line of duty in active service, which is to say that the disability is service connected.

Among the specified criteria the disability must meet are the following: (1) being due to loss of use of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; (2) being due to loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; (3) being due to loss of use of one lower extremity together with the loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; and (4) being due to the loss of use of both upper extremities such as to preclude use of the arms at or above the elbows. VA's SAH adjudication regulations, 38 CFR 3.809(b), which were promulgated to implement sections 2101(a) and 2101A(a), include these four SAH eligibility criteria regarding loss of use of extremities.

Because ALS is a rapidly progressive, totally debilitating, and irreversible disease, VA has determined that progression of ALS will routinely, and quickly, satisfy these existing SAH eligibility criteria. This interim final rule permits VA to determine SAH eligibility as soon as a veteran or servicemember establishes service connection for ALS, eliminating the need for additional development and reducing wait times. By streamlining the eligibility process, this regulatory amendment will allow veterans and servicemembers with service-connected ALS to receive and utilize to maximum advantage the SAH benefit, without unnecessary delay.

From the standpoint of SAH qualification procedures, the effect of this regulatory amendment is to allocate resources most efficiently and ensure a better lifestyle for veterans and servicemembers with service-connected ALS who want to adapt their homes so they can remain in them for as long as possible. In this regard, one major patient or caretaker decision concerning ALS—the implementation of tracheotomy and assisted ventilation—can in many instances leave the patient homebound. Veterans and servicemembers who experience slower progression of ALS can be managed at home with extensive home care. Thus, there exists an immediate need for VA to focus this regulatory change upon the SAH certificate of eligibility process and timeframe. Because the prognosis of the progression of ALS is typically established after a brief period of observation, in most cases less than 3 months, VA has determined that it is fair and reasonable to provide a certificate of eligibility for SAH upon determination of service connection for ALS.

VA's Loan Guaranty Service continues to identify and implement process improvements to the SAH program, while also recognizing the impact an expedited rating will have on reducing the grant processing timeline. Pursuant to the authority granted in 38 U.S.C. 2101(a)–(c), the Secretary has established in 38 CFR 36.4405 a two-phase approval process for the SAH program, a conditional approval and a final approval. Due to the complex and variable nature of the SAH grant, the process for overall approval can take as little as 6 months, but in rare instances, as long as 1 year, and the time to actually complete the construction of the adaptation can consume an additional 6 months.

For conditional approval, the Secretary must determine that the veteran and the home meet the disability, suitability, and feasibility requirements of the SAH program, and that the veteran has not exceeded the program's applicable dollar and usage limitations. 38 CFR 36.4405(a)(1). If these conditional requirements are met, the Secretary can then authorize pre-construction costs, to include architectural services, land surveys, and legal fees. 38 CFR 36.4405(a)(2). Final grant approval is contingent on the approval of property plans and specifications, the verification of ownership of the property, the submission of certifications regarding any future sale or rental of the property, the showing that flood insurance has been obtained, and the compliance with certain geographical limits. 38 CFR 36.4405(b)(2). This approval process

varies from case to case, as each eligible person may choose the project type, location, contractor, and architect, and each home may require specific unique adaptations to meet the person's needs.

Following grant approval, VA continues its oversight of the grant disbursement until each project is completed, by establishing escrow accounts, reviewing local and state building permits, and ensuring that compliance inspections meet local, state, and Federal building requirements along with VA minimum property requirements. The overall process from eligibility determination to occupancy of the home adapted to meet the person's specific requirements can take from 12 to 18 months, absent this rulemaking.

As stated above, therefore, in order to ensure that an eligible person can take advantage of this benefit to live independently as quickly as possible, an expeditious SAH eligibility determination is both critical and essential. Since the SAH event cycle is largely variable and reliant on factors beyond the control of VA, but ALS implications are known and unique, VA is regulating an arena that VA does control, that is, reducing the certification timeframes with regard to SAH claimants with service-connected ALS.

VA, therefore, intends to establish SAH eligibility for all persons with service-connected ALS rated as totally disabling. VA is doing so by adding a new provision to 38 CFR 3.809, which governs eligibility for SAH under 38 U.S.C. 2101(a) or 2101A(a). The new regulation adds the following sole criterion for ALS claimants, as an alternative to the previously listed criteria: the veteran or member of the Armed Forces serving on active duty has service-connected ALS rated 100-percent disabling under diagnostic code 8017 of 38 CFR 4.124a. By satisfying this added sole criterion, an ALS veteran or servicemember becomes eligible for the SAH grant, without further development and delay. VA incorporates this new category of criteria in § 3.809 as new paragraph (d).

VA is also reorganizing § 3.809 for ease of readability and clarity. First, VA is retitling § 3.809 to reflect that § 3.809 applies to a veteran or a member of the Armed Forces serving on active duty who is eligible for SAH benefits under 38 U.S.C. 2101(a)(2)(A)(i) but not those who are eligible under 38 U.S.C. 2101(a)(2)(A)(ii). On August 6, 2012, Congress provided temporary eligibility for SAH benefits to a veteran who served in the Armed Forces on or after September 11, 2001, if the veteran is entitled to compensation under chapter 11 of title 38 for a permanent service-connected disability meeting certain criteria. 38 U.S.C. 2101(a)(2)(A)(ii); Andrew Connolly Veterans Housing Act, Public Law 112–154, § 202, 126 Stat. 1176 (2012). Section 3.809 does not address those veterans. VA has been relying on the statute to provide SAH benefits to those veterans. Second, VA is amending the introductory text to § 3.809. Third, VA is removing current § 3.809(a) because its content is outdated and unnecessary. Fourth, VA is redesignating current § 3.809(b) as new § 3.809(a) with the exception of the last phrase and revising the heading to match its contents. Fifth, VA is rewording the last phrase of current § 3.809(b) in new § 3.809(b). Sixth, VA also makes four non-substantive technical amendments for purposes of clarity, by removing two erroneously placed periods at the conclusion of current § 3.809(b)(3) and (b)(4), removing two extraneous commas in current § 3.809(b)(1), removing ''or'' at the end of current § 3.809(b)(1)–(4), and removing the quotation marks from the title of § 3.809(c). Finally, in promulgating this rule, VA relies on its general authority granted under 38 U.S.C. 501(a)(1) to prescribe regulations to carry out the laws administered by VA, including those concerning the nature and extent of proof and evidence in order to establish the right to benefits. Therefore, VA is updating the authority citation to § 3.809 to refer to section 501(a). VA makes these formatting changes in order to incorporate the new ALS criterion in the clearest manner.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. This interim final rule is necessary to implement immediately the Secretary's decision to establish SAH eligibility for all persons with totally-disabling service-connected ALS. Delay in the implementation of this rule would be impracticable and contrary to the public interest, particularly to veterans and servicemembers.

Because the survival period for persons suffering from ALS is generally 18–48 months or less from the onset of symptoms, any delay in establishing SAH eligibility is extremely detrimental to veterans and servicemembers who are currently afflicted with ALS. Any delay in implementation until after a public-comment period could delay modifying the regulated certificate of eligibility process, depriving ALS veterans and servicemembers of quick and efficient access to SAH benefits.

The other revisions and minor punctuation changes made by this rule are technical corrections that merely remove unnecessary and potentially unclear language and punctuation. The substantive rights and duties of all parties affected by these changes have not been altered. Advance public notice and opportunity to comment on such changes is unnecessary under 5 U.S.C. 553(b)(B), and because of their nonsubstantive nature, we find good cause to publish these changes with an immediate effective date.

For the foregoing reasons, the Secretary is issuing this rule as an interim final rule with immediate effect.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will not affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Orders 12866 and 13563. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.106, Specially Adapted Housing for Disabled Veterans and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on November 7, 2013, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: November 26, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.809 to read as follows:

§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a)(2)(A)(i).

In order for a certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a)(2)(A)(i) or 2101A(a) to be extended to a veteran or a member of the Armed Forces serving on active duty, the following requirements must be met:

(a) *General.* A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total.

(b) *Disability.* The disability must be due to:

(1) The loss or loss of use of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair,

(2) Blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity,

(3) The loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair,

(4) The loss or loss of use of one lower extremity together with the loss or loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair,

(5) The loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow, or

(6) Full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

(c) *Preclude locomotion.* This term means the necessity for regular and constant use of a wheelchair, braces, crutches or canes as a normal mode of locomotion although occasional locomotion by other methods may be possible.

(d) *Amyotrophic lateral sclerosis.* VA considers § 3.809(b) satisfied if the veteran or member of the Armed Forces serving on active duty has service-connected amyotrophic lateral sclerosis rated 100 percent disabling under 38 CFR 4.124a, diagnostic code 8017.

(Authority: 38 U.S.C. 501(a), 1151(c)(1), 2101, 2101A)

Cross Reference: Assistance to certain disabled veterans in acquiring specially adapted housing. See §§ 36.4400 through 36.4410 of this chapter.

[FR Doc. 2013–28831 Filed 12–2–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–A021

Criteria for a Catastrophically Disabled Determination for Purposes of Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation concerning the manner in which VA determines that a veteran is catastrophically disabled for purposes of enrollment in priority group 4 for VA health care. As amended by this rulemaking, the regulation articulates the clinical criteria that identify an individual as catastrophically disabled, instead of using the corresponding International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) and Current Procedural Terminology (CPT®) codes. The revisions ensure that the regulation is not out of date when new versions of those codes are published. The revisions also broaden some of the descriptions for a finding of catastrophic disability. Additionally, the final rule does not rely

on the Folstein Mini Mental State Examination (MMSE) as a criterion for determining whether a veteran meets the definition of catastrophically disabled, because we have determined that the MMSE is no longer a necessary clinical assessment tool.

DATES: *Effective Date:* This rule is effective July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Rajiv Jain, MD, Assistant Deputy Under Secretary for Health for Patient Care Services (10P4), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7800. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 1705, VA established eight enrollment categories (in order of priority) for veterans eligible to enroll in VA's health care system. Under 38 CFR 17.36(b)(4), ''veterans who are determined to be catastrophically disabled'' are to be enrolled in enrollment priority group 4. For enrollment purposes, § 17.36(e) defines ''catastrophically disabled'' and, prior to this final rulemaking, § 17.36(e)(1) identified the covered conditions for catastrophically disabled in part by assignment of particular tabular diagnosis codes from Volume 1 of the ICD–9–CM, associated supplementary codes (V Codes), tabular procedure codes from Volume 3 of ICD–9–CM, and procedure codes from the CPT®. (CPT is a trademark of the American Medical Association. CPT codes and descriptions are copyrighted by the American Medical Association. All rights reserved.) This approach will soon be outdated; the ICD–9–CM and CPT® will no longer be used for disease and inpatient procedure coding after October 1, 2014, when they will be replaced by updated tabular diagnosis and supplementary codes from the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM) and by procedure codes from the International Classification of Diseases, Tenth Revision, Procedure Coding System (ICD–10–PCS). For this reason, and because these codes are subject to regular update and revision in the future, we published on February 22, 2013 (78 FR 12264), a proposed rule to rely on the clinical and diagnostic information that formed the basis for the codes listed in the regulation, rather than relying on the codes by number. We also proposed to eliminate the MMSE as a criterion for determining whether a veteran meets the definition of catastrophically disabled. The use of the MMSE is redundant of the Katz scale, the Global Assessment of Functioning, and the Functional Independence Measure, which are referred to in the current regulation as tools to measure an individual's ability to carry out the Activities of Daily Living. We provided a 60-day comment period, which ended on April 23, 2013. We received 2 comments from members of the general public.

One commenter was generally in support of the rulemaking. The commenter had one concern regarding the ''criteria by which an amputee may be able to attain Priority Group 4 benefits.'' Specifically, the commenter was concerned with amputation, detachment, or reamputation of the forearm at or through the radius and ulna. The commenter stated that this amendment narrows the definition of catastrophically disabled instead of the intended purpose of the proposed rulemaking, which was to broaden the criteria. The commenter further stated: ''Specificity of injury narrows the range of those that can claim benefits, but the differen[ce] between a veteran having a catastrophic injury because some part of his forearm has been amputated versus an amputation that occurred between the radius and ulna seems to impose an arbitrary restriction.'' Also, the commenter stated that ''[i]f a veteran's hand were crushed, for example, it is disabled in the same way an amputated hand would be. However, under these precise definitions, he would be denied coverage under Priority Group 4.''

VA considers a veteran to be catastrophically disabled if the veteran has a condition resulting from two of the procedures listed in § 17.36(e)(1)(i) through (e)(1)(xvi). The amputation, detachment, or reamputation of the veteran's forearm at or through the radius and the ulna does not by itself render a veteran catastrophically disabled. However, if a veteran's forearm was amputated, detached, or reamputated at any point, VA would consider this condition as one of the veteran's qualifying conditions for a determination of catastrophically disabled. VA does not limit this definition to one specific point in the forearm as the commenter suggests. The commenter also stated that if the veteran had a crushed hand this would be the same as amputation. Depending on the severity of the crushed hand a clinician would determine whether the injury would meet a criterion under paragraph (e)(1). Only a clinician may determine if a veteran is catastrophically disabled based on the veteran's disabilities. We are not making any changes based on this commenter's concerns.

Another commenter was also partially in agreement with the proposed rule. The commenter was concerned, however, that by eliminating the need to update ICD codes VA would not have a mechanism in place to update the way VA determines that a veteran is catastrophically disabled. The elimination of the ICD–9–CM and CPT® codes does not mean that if the classification of conditions that render a veteran catastrophically disabled were to change in the future, VA would not amend its regulations to conform with this change. On the contrary, VA will continue to comply with the national and international standards of care and provide veterans with the most up-to-date health care.

The commenter further stated that not relying on the numbered codes will cause physicians to use a greater level of discretion when determining who is considered to be catastrophically disabled. The commenter indicated that while there are terminological clarifications for blindness, such clarifications do not exist for persistent vegetative state, ''which seems like it would be equally open to a variety of understandings by different physicians across the country.'' Although the proposed rule did not provide ''terminological clarifications'' for persistent vegetative state, this condition has a medical definition. A vegetative state is present when the body preserves the ability to maintain blood pressure, respiration, and cardiac function, but not cognitive function. Kenneth Maiese, MD, ''Vegetative State and Minimally Conscious State,'' *http://www.merckmanuals.com/professional/neurologic_disorders/coma_and_impaired_consciousness/vegetative_state_and_minimally_conscious_state.html?qt=persistent%20vegitative%20state&alt=sh* (last updated Nov. 2012). A vegetative state is considered persistent if it lasts more than 1 month. Id. Persistent vegetative state is a term of art that is recognized in the medical community and requires no further clarifiers. Also, clinicians must always exercise clinical judgment in the context of a shared vocabulary, and, even when assigning a particular code, there will be discretion and occasional deviation within expected and accepted medical limits.

The commenter was also concerned that the proposed rule stated that there were no costs or savings associated with the rulemaking. The commenter indicated that the number of veterans who would be considered catastrophically disabled would increase in the coming years as veterans return from the war in Iraq and Afghanistan. VA acknowledges that the number of catastrophically disabled

veterans may increase as veterans and servicemembers return from combat areas. By stating in the proposed rulemaking that there would be no costs or savings associated with the rulemaking, we meant that by amending § 17.36(e) VA would not incur additional costs in the diagnosis of a catastrophic disability by eliminating the ICD–9–CM and CPT® codes. We are not making any changes based on any of this commenter's concerns.

In order for the clinicians to properly codify a veteran as catastrophically disabled under the provisions of this rulemaking and for VA to properly codify a veteran in the correct enrollment category, VA must update its computer system. Because this computer update will not be in place until next year, we are delaying the applicability date of this rulemaking until July 1, 2014.

We are making a technical edit to § 17.36(e)(1)(vi) to remove an inadvertent duplication of the phrase ''of the''.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with one editorial change.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB) unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on October 31, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Veterans.

Dated: November 27, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.36 as follows:

■ a. Revise paragraph (e)(1).

■ b. Remove paragraph (e)(2)(ii).

■ c. Redesignate paragraphs (e)(2)(iii) and (iv) as new paragraphs (e)(2)(ii) and (iii), respectively.

The revisions read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

* * * * *

(e) * * *

(1) Quadriplegia and quadriparesis; paraplegia; legal blindness defined as visual impairment of 20/200 or less visual acuity in the better seeing eye with corrective lenses, or a visual field restriction of 20 degrees or less in the better seeing eye with corrective lenses; persistent vegetative state; or a condition resulting from two of the following procedures, provided the two procedures were not on the same limb:

(i) Amputation, detachment, or reamputation of or through the hand;

(ii) Disarticulation, detachment, or reamputation of or through the wrist;

(iii) Amputation, detachment, or reamputation of the forearm at or through the radius and ulna;

(iv) Amputation, detachment, or disarticulation of the forearm at or through the elbow;

(v) Amputation, detachment, or reamputation of the arm at or through the humerus;

(vi) Disarticulation or detachment of the arm at or through the shoulder;

(vii) Interthoracoscapular (forequarter) amputation or detachment;

(viii) Amputation, detachment, or reamputation of the leg at or through the tibia and fibula;

(ix) Amputation or detachment of or through the great toe;

(x) Amputation or detachment of or through the foot;

(xi) Disarticulation or detachment of the foot at or through the ankle;

(xii) Amputation or detachment of the foot at or through malleoli of the tibia and fibula;

(xiii) Amputation or detachment of the lower leg at or through the knee;

(xiv) Amputation, detachment, or reamputation of the leg at or through the femur;

(xv) Disarticulation or detachment of the leg at or through the hip; and

(xvi) Interpelviaabdominal (hindquarter) amputation or detachment.

* * * * *

[FR Doc. 2013–28858 Filed 12–2–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0194; FRL–9838–6]

Revisions to the Arizona State Implementation Plan, Maricopa County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Maricopa County Area portion of the Arizona State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 19, 2013 and concerns particulate matter (PM) emissions from fugitive dust sources. We are approving local statutes that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on January 2, 2014.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0194 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://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 available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On April 19, 2013 (78 FR 23527), EPA proposed to approve the following statutes into the Arizona SIP.

Local agency	Statute No.	Rule title	Adopted	Submitted
ADEQ	9–500.04	Air Quality Control; Definitions	07/02/07	05/25/12
ADEQ	11–877	Air Quality Control Measures	07/02/07	05/25/12
ADEQ	49–457.01	Leaf Blower Use Restrictions and Training; Leaf Blowers Equipment Sellers; Informational Material; Outreach; Applicability.	07/02/07	05/25/12
ADEQ	49–474.01	Additional Board Duties in Vehicle Emissions Control Areas; Definitions.	07/02/07	05/25/12
ADEQ	49–474.05	Dust Control; Training; Site Coordinators	07/02/07	05/25/12
ADEQ	49–474.06	Dust Control Subcontractor Registration; Fee	07/02/07	05/25/12

We proposed to approve these statutes because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the statutes and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one set of comments which were submitted anonymously to the docket for this action at *www.regulations.gov.* These comments clearly support our April 2013 proposed approval, but also present several concerns regarding Arizona's efforts to reduce PM_{10} pollution. Specifically, the comments recommend stronger control of emissions from leaf blowers, expanding leaf blowers requirements beyond county employees, control of leaf blowers in vacuum mode, control of leaf blowers on permitted sites, and greater efforts to control coccidioidomycosis.

These are all constructive comments that could help reduce the harmful effects of pollution in Arizona. However, we have no authority to require such regulatory improvements as part of today's action on the submitted Arizona statues.

III. EPA Action

No comments were submitted that change our assessment of the statutes as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these statutes into the Arizona SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 28, 2013.

Alexis Strauss,

Acting 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 52.120, is amended by adding paragraphs (c)(157)(i)(A)(*3*) through (*5*) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(157) * * *

(i) * * *

(A) * * *

(*3*) Arizona Revised Statutes (Thomson/West, 2008): Title 9 (cities and towns), chapter 4 (general powers), article 8 (miscellaneous), section 9–500.04 (''Air quality control; definitions''), excluding paragraphs A.1, A.2, A.4, and A.10; paragraphs B through G; and paragraph I.

(*4*) Arizona Revised Statutes (West, 2012): Title 11 (counties), chapter 6 (county planning and zoning), article 6 (air quality), section 11–877 (''Air quality control measures'').

(*5*) Arizona Revised Statutes (Thomson/West, 2005 main volume, 2012 Cumulative Pocket Part):

(i) Title 49 (the environment), chapter 3 (air quality), article 2 (state air pollution control), section 49–457.01 (''Leaf blower use restrictions and training; leaf blowers equipment sellers; informational material; outreach; applicability''); and

(ii) Title 49 (the environment), chapter 3 (air quality), article 3 (county air pollution control), sections 49–474.01 (''Additional board duties in vehicle emissions control areas; definitions''), excluding paragraphs A.1 through A.3, A.9, A.10, paragraphs C through G, and paragraph I; 49–474.05 (''Dust control; training; site coordinators''); and 49–474.06 (''Dust control; subcontractor registration; fee'').

* * * * *

[FR Doc. 2013–28244 Filed 12–2–13; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2013–0678; FRL–9903–33–Region–5]

Direct Final Approval of Hospital/Medical/Infectious Waste Incinerator Negative Declaration for Designated Facilities and Pollutants: Michigan and Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is notifying the public that we have received negative declarations from Michigan and Wisconsin regarding Hospital/Medical/Infectious Waste Incinerator (HMIWI) units within those states. The Michigan Department of Environmental Quality (MDEQ) submitted its negative declaration on August 9, 2013. The Wisconsin Department of Natural Resources (WDNR) submitted its negative declaration on July 15, 2013. Each state notified EPA in its negative declaration letter that there are no HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (Act) currently operating in its state.

DATES: This direct final rule will be effective February 3, 2014, unless EPA receives adverse comments by January 2, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0678, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: nash.carlton@epa.gov.*
3. *Fax:* (312) 692–2543.
4. *Mail:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2013–0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. Final EPA Action
III. Statutory and Executive Order Reviews

I. Background

Section 111(d) of the Act requires that EPA develop regulations providing that states must submit to EPA plans establishing standards of performance for certain existing sources of pollutants when a standard of performance would apply to the existing source if it were a new source, and if the pollutants are noncriteria pollutants (i.e., pollutants for which there is no national ambient air quality standards) and are not on a list published under section 108 of the Act or emitted from a source category regulated under section 112 of the Act. Section 129 of the Act and 40 CFR part 60, Subpart B apply the section 111(d) requirements to existing solid waste combustors, including HMIWIs, and provide that EPA should include, as part of the performance standards, emissions guidelines (EGs) that include the plan elements required by section 129.

EPA promulgated new source performance standards and EGs for HWIMIs on September 15, 1997 and December 19, 1995, respectively (62 FR 48382, 60 FR 65414), and amended them most recently on April 4, 2011 (76 FR 18407). The standards and EGs are codified at 40 CFR part 60, subparts Ec and Ce, respectively. Thus, states were required to develop plans for existing HWIMIs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B.

A HMIWI unit is defined in 40 CFR 60.51c as any device that combusts any amount of hospital waste and/or medical/infectious waste. The designated facilities to which the EGs apply are existing HMIWI units that: (1) commenced construction on or before June 20, 1996, or for which a modification was commenced on or before March 16, 1998; or (2) commenced construction after June 20, 1996 but no later than December 1, 2008, or for which a modification commenced after March 16, 1998 but no later than April 6, 2010, with limited exceptions as provided in paragraphs 40 CFR 60.32e(b) through (h).

40 CFR part 60, subpart B contains general provisions applicable to the

adoption and submittal of state plans for subject facilities under sections 111(d) and 129 (111(d)/129 plan). 40 CFR part 62, subpart A provides the procedural framework for the submission of the plans. However, 40 CFR 60.23(b) and 62.06 provide that, if there are no existing sources of the designated pollutant in a state, the state may submit a letter of certification to that effect (i.e., a negative declaration) in lieu of a plan. The negative declaration exempts the state from the provisions of 40 CFR part 60, subpart B that require the submittal of a 111(d)/129 plan.

On August 9, 2013, MDEQ submitted its HMIWI negative declaration, in which it certifies that there are no HWIMI units currently operating in Michigan. EPA received the negative declaration on August 16, 2013. On July 15, 2013, WDNR submitted its HMIWI negative declaration, in which it certifies that there are no HWIMI units currently operating in Wisconsin. EPA received WDNR's negative declaration on July 23, 2013.

II. Final EPA Action

In this direct final action, EPA is providing the public with notice of, and amending 40 CFR part 62 to reflect, EPA's receipt of the Michigan and Wisconsin negative declarations. EPA is publishing this rule without prior proposal because EPA views this as a non-controversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to amend 40 CFR part 62 to reflect receipt of the negative declarations in the event adverse written comments are filed. This rule will be effective February 3, 2014 without further notice unless we receive relevant adverse written comments by January 2, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. EPA then will address all public comments in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on any part of this action and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective February 3, 2014.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely notifies the public of EPA receipt of a negative declaration from an air pollution control agency without any existing HMIWI units in its state. This action imposes no requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely recognizes the negative declaration for existing HMIWI units from the MDEQ and WDNR, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

With regard to negative declarations for designated facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR Part 62 accordingly. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 negative declaration submission, to use VCS in place of a section 111(d)/129 negative declaration that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 approving Michigan's and Wisconsin's section 111(d)/129 negative declarations for HMIWI sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Hospital/medical/infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 8, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

■ 2. Subpart X is amended by adding new § 62.5610 and a new undesignated center heading to read as follows:

CONTROL OF AIR EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS

§ 62.5610 Identification of plan—negative declaration.

On August 9, 2013, the Michigan Department of Environmental Quality submitted a negative declaration letter to EPA certifying that there are no existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) units in the State of Michigan subject to the emissions guidelines at 40 CFR part 60, subpart Ce.

■ 3. Subpart YY is amended by adding new § 62.12320 and a new undesignated center heading to read as follows:

CONTROL OF AIR EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS

§ 62.12320 Identification of plan—negative declaration.

On July 15, 2013, the Wisconsin Department of Natural Resources submitted a negative declaration letter to EPA certifying that there are no existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) units in the State of Wisconsin subject to the emissions guidelines at 40 CFR part 60, subpart Ce.

[FR Doc. 2013–28965 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217097–1757–02]

RIN 0648–XC981

Reef Fish Fishery of the Gulf of Mexico; 2013 Accountability Measure and Closure for Hogfish in the Gulf of Mexico

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial and recreational sectors for hogfish in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2013 fishing year through this temporary final rule. Based on the commercial and recreational landings, NMFS determined that the stock (commercial and recreational) annual catch limit (ACL) for Gulf hogfish has been reached. Therefore, NMFS closes the commercial and recreational sectors for hogfish in the Gulf EEZ at 12:01 a.m., local time, December 2, 2013, until January 1, 2014. This closure is necessary to protect the Gulf hogfish resource.

DATES: This rule is effective 12:01 a.m., local time on December 2, 2013, until 12:01 a.m., local time on January 1, 2014, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov.*

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

On December 29, 2011, NMFS published the final rule for the Generic Annual Catch Limits/Accountability Measures Amendment to the Red Drum, Reef Fish Resources, Shrimp, and Coral and Coral Reefs Fishery Management Plans for the Gulf of Mexico (Generic ACL Amendment; 76 FR 82044) as prepared and submitted by the Council. This final rule, in part, implemented changes to the Reef Fish FMP, including setting a stock ACL and implementing AMs for Gulf hogfish.

The Gulf hogfish stock ACL is 208,000 lb (94,347 kg), round weight, as specified in 50 CFR 622.41(p).

In accordance with regulations at 50 CFR 622.41(p), if the sum of commercial and recreational landings exceed the stock ACL in a fishing year, then if the stock ACL is again reached or projected to be reached in the following fishing year, NMFS is required to close the commercial and recreational sectors for hogfish for the remainder of that following fishing year. NMFS determined that the stock ACL for Gulf hogfish was exceeded in the 2012 fishing year. Based on 2013 commercial and recreational landings, NMFS has determined that the stock ACL of 208,000 lb (94,347 kg), round weight, for Gulf hogfish has been reached for the 2013 fishing year. Therefore, NMFS implements the in-season AM and the commercial and recreational harvest of Gulf hogfish will close at 12:01 a.m., local time on December 2, 2013, until 12:01 a.m., local time on January 1, 2014.

Classification

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

This action is taken under 50 CFR 622.41(p) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule because such procedures are unnecessary. The AMs state that NMFS will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for Gulf hogfish for the remainder of the fishing year if landings reach or are projected to reach the stock ACL specified in 50 CFR 622.41(p) in the year following an overage of the hogfish stock ACL. All that remains is to notify the public of the reduced fishing season

for hogfish for the remainder of the fishing year.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the hogfish resource. Any delay in the closure could result in the stock ACL for hogfish being exceeded further.

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

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

Dated: November 27, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–28907 Filed 11–27–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154–2241–02]

RIN 0648–XD009

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit from three large medium or giant BFT per vessel per day/trip to five large medium or giant BFT per vessel per day/trip for the remainder of the October–November time period and the December time period of the 2013 fishing year, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and to Highly Migratory Species Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective November 27, 2013 through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Tom Warren or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations.

The 2013 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2013. The General category season, which was open January 1 through February 15, 2013, resumed on June 1, 2013, and continues through December 31, 2013. The General category daily retention limit is currently three large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (78 FR 50346, August 19, 2013). This retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. Each of the General category time periods (January, June–August, September, October–November, and December) is allocated a portion of the annual General category quota.

For the 2013 fishing year, NMFS first adjusted the General category limit from the default level of one large medium or giant BFT for the 2013 January subquota period to two large medium or giant BFT (77 FR 74612, December 17, 2012). That retention limit was effective from January 1, 2013, until February 15, 2013, when NMFS closed the fishery because the January subquota had been met (78 FR 11788, February 20, 2013). NMFS then adjusted the General category limit from the default level of one large medium or giant for the June through December period to three large medium or giant BFT (78 FR 26709, May 8, 2013; and 78 FR 50346, August 19, 2013).

The 2012 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quota for 2013 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the 2013 General category share is 435.1 mt (baseline and adjusted), and the October through November, and December General category subquotas are 56.6 mt and 22.6 mt, respectively (78 FR 36685; June 19, 2013). NMFS is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for the remainder of October–November, and December 2013 General category fishery. These considerations include, but are not limited to, the following: NMFS continues to obtain valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status from the catches of the General category to date; the projected ability of the vessels fishing under the General category quota to harvest the quota before the end of the fishing year; and biological samples collected from BFT landed by General category fishermen and provided by BFT dealers. As this action would be taken consistent with the quotas previously established and analyzed in the 2013 BFT quotas final rule (78 FR 36685, June 19, 2013), and consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the

full General category quota without exceeding it based upon the Consolidated HMS FMP goal: ''Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.''

NMFS' preliminary estimate of landings for the General category, as of November 26, 2013, was 210.9 mt, out of a total General category quota of 435.1 mt. Based on General category landings rates during the October through December time-period over the last several years, it is highly unlikely that the quota will be filled under the current daily retention limit of three BFT per vessel. Therefore, maintenance of the current limit of three fish would increase the likelihood of under harvesting the General category quota. Increasing the daily retention limit from three to five will increase the likelihood that the General category catch of BFT will approach, but not exceed, the annual quota, as well as maximize the opportunity for catching BFT harvest during the October–November and December subquota periods. Maximizing opportunity within each subquota period is also important because of the migratory nature and seasonal distribution of BFT. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for BFT may be constrained by the short amount of time the BFT are present.

Based on these considerations, NMFS has determined that a five-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the current limit of three large medium or giant BFT per vessel per day/trip, to five large medium or giant BFT per vessel per day/trip. This retention limit will be in effect through December 31, 2013, unless the unlikely circumstance arises that additional inseason action is required to prevent catch from exceeding the quota.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of five fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.gov,* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the current retention limit of three BFT per day/trip and may perpetuate under harvest of the General category quota, or disadvantage a particular geographic region. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective as soon as possible, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period (due to the seasonality of BFT distribution). Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 27, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–28903 Filed 11–27–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XD004

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Virginia

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2013 summer flounder commercial quota allocated to the Commonwealth of Virginia has been harvested. Vessels issued a commercial Federal fisheries

permit for the summer flounder fishery may not land summer flounder in Virginia for the remainder of calendar year 2013, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Virginia that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in Virginia.

DATES: Effective 1801 hours, December 4, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2013 fishing year is 11,793,596 lb (5,349,575 kg) (77 FR 76942, December 31, 2012). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, resulting in a commercial quota of 2,514,012 lb (1,140,356 kg). The 2013 allocation was adjusted to 5,040,501 lb (2,286,333 kg) after deduction of research set-aside, adjustment for 2012 quota overages, and adjustments for quota transfers between states (mostly transfers from North Carolina to cover safe harbor landings in Virginia by North Carolina vessels).

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial landings and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information that, Virginia has harvested its quota for 2013.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 1801 hours, December 4, 2013, landings of summer flounder in Virginia by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2013 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 1801 hours, December 4, 2013, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Virginia for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the summer flounder fishery for Virginia until January 1, 2014, under current regulations. The regulations at § 648.103(b) require such action to ensure that summer flounder vessels do not exceed quotas allocated to the states. If implementation of this closure was delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the Summer Flounder Fishery Management Plan. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: November 27, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–28908 Filed 11–29–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120814338–2711–02]

RIN 0648–BD71

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (West Coast Region, NMFS), phone: 206–526–6147, fax: 206–526–6736, *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The PCGFMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 14, 2012, NMFS published a proposed rule to implement the 2013–2014 harvest specifications and management measures for most species of the Pacific Coast groundfish

fishery (77 FR 67974). The final rule to implement the 2013–2014 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on January 3, 2013 (78 FR 580).

The Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended changes to current groundfish management measures at its September 12–17 and October 30–November 6, 2013 meetings. Management measures are designed to meet two primary goals: To achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species; and to foster the rebuilding of overfished stocks by keeping harvest within their rebuilding ACLs.

The Council recommended that NMFS issue surplus carryover pounds of petrale sole in the individual fishing quota (IFQ) program. NMFS continues to support our previous decision that surplus carryover pounds of petrale sole will not be issued due to risk of exceeding the 2013 ACL for this stock, which is currently in overfished status. This decision was previously outlined in a May 6, 2013 letter to the Council and no new information was provided that would change that decision.

Changes to Fishery Management Measures for the End of 2013

At its September 12–17 meeting, the Council recommended adjusting groundfish management measures for the end of 2013 to respond to updated fishery information and additional inseason management needs. Those changes to management measures are implemented in this action. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species, except a very small increase in impacts to canary rockfish, than originally projected.

Limited Entry Fixed Gear and Open Access Sablefish Daily Trip Limit (DTL) Fishery Management Measures

Limited Entry Fixed Gear and Open Access Sablefish DTL Fisheries North of 36° N. Lat.

For the limited entry fixed gear and open access fixed gear sablefish DTL fisheries north of 36° N. lat. through the end of 2013, the Council considered increases to trip limits. The Council's Groundfish Management Team (GMT) made model-based landings projections for the limited entry fixed gear and open access fixed gear sablefish DTL fisheries north of 36° N. lat. for the remainder of the year. These projections were based on the most recent information available. The model predicted harvest of 82 percent (161 mt) of the limited entry fixed gear harvest guideline (197 mt) and 83 percent (241 mt) of the open access harvest guideline (291 mt) under current trip limits. With the increase in trip limits, predicted harvest is 91 percent (179 mt) of the limited entry fixed gear harvest guideline (197 mt) and 91 percent (265 mt) of the open access harvest guideline (291 mt).

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear and the open access sablefish DTL fisheries north of 36° N. lat. The trip limits for sablefish in the limited entry fixed gear fishery north of 36° N. lat. increase from ''1,110 lb (499 kg) per week, not to exceed 3,300 lb (1,497 kg) per two months'' to ''1,850 lb (839 kg) per week, not to exceed 5,500 lb (2,495 kg)'' beginning December 3, 2013, through the end of the year.

The trip limits for sablefish in the open access sablefish DTL fishery north of 36° N. lat. are increased from ''300 lb (136 kg) per day, or one landing per week of up to 800 lb (363 kg), not to exceed 1,600 lb (726 kg) per two months'' to ''300 lb (136 kg) per day, or one landing per week of up to 1,200 lb (544 kg), not to exceed 2,400 lb (1,089 kg) per two months'' beginning December 3, 2013, through the end of the year.

Limited Entry Fixed Gear and Open Access Sablefish DTL Fisheries South of 36° N. Lat.

The Council recommended and NMFS is implementing a modest increase for the open access sablefish fishery trip limits south of 36° N. lat.

There is no formal allocation of sablefish between the limited entry fixed gear and open access sablefish daily trip limit (DTL) fisheries south of 36° N. lat. The Council designed 2013 trip limits for these two commercial groundfish non-trawl fisheries south of 36° N. lat. that were anticipated to allow slightly more overall harvest of sablefish by the limited entry fixed gear fishery. The 2013 trip limits were also designed so that, when catches in each sector are combined, total impacts of these two fisheries are anticipated to approach but not exceed the 2013 non-trawl allocation for sablefish south of 36° N. lat.

Catch of sablefish in the open access sablefish DTL fishery south of 36° N. lat. has been lower than anticipated. Based on the most recent fishery information, if no action is taken and catch remains lower than expected, landings of sablefish in this fishery through the end of the year would be 176 mt. This level of catch would be below the sablefish harvest target of 362 mt for the open access fishery by approximately 49 percent. Catch of sablefish in the limited entry fixed gear sablefish DTL fisheries south of 36° N. lat. has been within their harvest target.

The Council considered increases to trip limits in the open access sablefish DTL fishery south of 36° N. lat. to maintain fishing opportunities through the remainder of 2013, while keeping catch within the 2013 sablefish ACL for the area south of 36° N. lat.

Since projected catch in the open access sablefish DTL fishery south of 36° N. lat. had a large projected underage compared to their harvest target, the Council recommended an increase in the open access sablefish DTL fishery trip limits for the end of 2013. With this increase in sablefish trip limits for Period 6 (November–December) projected catch through the end of the year is 261 mt, or approximately 72 percent of the 2013 harvest target.

With this increase in trip limits for the open access sablefish DTL fishery, and retention of the current trip limits in the limited entry fixed gear sablefish DTL fishery, projected catches in these two fisheries combined is 688 mt, 120 mt below the 2013 non-trawl allocation for sablefish south of 36 N. lat. of 808 mt adjusted for discard mortality.

West Coast Groundfish Observer data indicate that impacts to overfished species in the commercial fixed gear sablefish fisheries south of 36° N. lat. are extremely low. Therefore, increases to trip limits to raise projected impacts closer to the 2013 sablefish non-trawl allocation and the ACL are not anticipated to result in changes to impacts to co-occurring overfished groundfish species.

Therefore, the Council recommended and NMFS is implementing an increase for the open access fishery trip limits south of 36° N. lat. from ''300 lb (136 kg) per day, or 1 landing per week of up to 1,460 lb (662 kg), not to exceed 2,920 lb (1,325 kg) per 2 months'' to ''380 lb (172 kg) per day, or 1 landing per week of up to 1,800 lb (817 kg), not to exceed 3,800 lb (1,724 kg) per 2 months'' beginning December 3, 2013, through the end of the year. Limited Entry Fixed Gear and Open Access Fishery Management Measures for Deeper Nearshore Rockfish South of 40°10′ N. lat.

The Council recommended and NMFS is implementing trip limit increases for deeper nearshore rockfish in the limited entry fixed gear and open access fishery south of 40°10′ N. lat.

The Council considered how catches in the nearshore fishery south of 40°10′ N. lat. have been well below the annual catch limit in recent years, and considered modest increases to allow additional harvest opportunities for deeper nearshore rockfish while keeping total catch within the applicable harvest guidelines.

Modest increases to the deeper nearshore rockfish trip limits in the limited entry fixed gear and open access fisheries in Period 6 (November–December) are not projected to increase impacts to most co-occurring overfished rockfish. Projected impacts to canary rockfish are anticipated to increase 0.1 mt, but total catch of canary rockfish in non-trawl fisheries through the end of the year (27.2 mt) are anticipated to stay well below the non-trawl allocation (46.0 mt).

Therefore, the Council recommended and NMFS is implementing trip limit changes for deeper nearshore rockfish in the limited entry fixed gear and open access fisheries south of 40°10′ N. lat.: from ''900 lb (408 kg) per 2 months'' to ''1,000 lb (454 kg) per 2 months'' in Period 6 (November–December).

Review of 2013–2014 Fisheries and Setting Management Measures for the Remainder of the Biennium

At its October 30–November 6, 2013 meeting, the Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and other inseason management needs. The Council reviewed the 2013 commercial groundfish fisheries by considering: (1) The fishery management measures initially set for 2013, (2) modifications to management measures that were needed inseason for 2013, as new data became available throughout the 2013 season, and (3) retrospective total catch pattern data from the 2013 year-to-date.

The Council's goal in scrutinizing the 2013 groundfish fisheries was to develop a set of management measures for the remainder of the biennial period that would take into account new knowledge gained in 2013 to better structure the fisheries for the remainder of the 2013–2014 biennium. The improved structure of the initial 2014 management measures was designed to continue to keep total catch of managed species liberal enough to allow the catch of target species to approach, but not exceed, their 2014 ACLs, yet be conservative enough to reduce the need for inseason restrictions. The changes also allow the industry to plan for their 2014 fishing season(s) and ensure that management measures in place for the remainder of the biennial period reflect the best available science. If harvest of sablefish in 2014 is higher or lower than anticipated, the Council and NMFS may take action inseason during 2014 to adjust fishery management measures to allow the catch of target species to approach, but not exceed, their 2014 ACLs.

The adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2014.

Limited Entry Fixed Gear and Open Access Sablefish Daily Trip Limit (DTL) Fishery Management Measures

Based on the Council's goals in reviewing 2013 fishery data, as described above, the Council considered the various adjustments to fishery management measures in the limited entry fixed gear and open access fisheries that were necessary during the first ten months of the 2013–2014 biennium at its November 2013 meeting. The Council and its advisory bodies considered the most recent information on the status of 2013 fisheries and requests from industry and provided the following recommendations for inseason adjustments for the remainder of the biennium.

Limited Entry Fixed Gear and Open Access Sablefish DTL Fisheries North of 36° N. Lat.

At its June 2013 meeting, the Council took action to increase limits in the limited entry fixed gear and open access sablefish DTL fisheries north of 36° N. lat. The Council considered the most recent catch projections and recommended increases to trip limits in both fisheries to allow industry increased access to the fishery harvest guidelines and come closer to attaining, while not exceeding, the non-trawl fishery allocation for sablefish in 2013. As described above, at its September 2013 meeting the Council recommended a further increase to trip limits in this fishery for the end of 2013 because catch was still accruing slower than anticipated and, without changes to trip limits, harvest through the end of 2013 was anticipated to be well below the fishery harvest guideline.

At its November 2013 meeting, the Council considered stable (the same) trip limits for periods 1–6 for the limited entry fixed gear fisheries north of 36° N. lat. for 2014. Trip limits for 2014 were estimated by the GMT using landings projection models adjusted for discard mortality with the most recent available data. The updated trip limits that the Council considered for 2014 are anticipated to achieve, but not exceed, the fishery harvest guideline for sablefish in 2014. Furthermore, a stable trip limit approach for these fisheries will help provide consistency, safety, and predictability to fishing communities, and enable participants to plan in advance for their fishery.

West Coast Groundfish Observer data indicate that the trip limits recommended for periods 1–6 are not anticipated to increase projected impacts of co-occurring overfished groundfish species.

Therefore, the Council recommended, and NMFS is implementing, the following changes to trip limits for the limited entry fixed gear sablefish DTL fishery north of 36° N. lat.: change to ''950 (431 kg) lb per week, not to exceed 2,850 (1,293 kg) lb per 2 months'' in periods 1–6, on January 1, through the end of the year. Also, the Council recommended, and NMFS is implementing, the following changes to the open access sablefish DTL fishery trip limits north of 36° N. lat.: change to ''300 lb (136 kg) per day, or 1 landing per week of up to 800 lb (363 kg), not to exceed 1,600 lb (726 kg) per 2 months'' in periods 1–6, on January 1, through the end of the year.

Limited Entry Fixed Gear and Open Access Sablefish DTL Fisheries South of 36° N. Lat.

As described above catch in the sablefish DTL fisheries south of 36° N. Lat. was accruing slower than anticipated in 2013 and, without changes to trip limits, harvest through the end of 2013 was anticipated to be well below the non-trawl allocation adjusted for discard mortality.

The Council recommended, and NMFS is implementing, stable trip limits for periods 1–6 for the limited entry fixed gear and open access DTL fisheries south of 36° N. lat. for 2014. Appropriate trip limits for 2014 were estimated by the GMT using landings projection models adjusted for discard mortality with the most recent available data. A stable trip limit approach will help provide consistency, safety, and predictability to fishing communities, and enable participants to plan in advance for their fishery.

West Coast Groundfish Observer data indicate that the stable trip limits recommended for periods 1–6 are not anticipated to increase projected impacts of co-occurring overfished groundfish species.

Therefore, the Council recommended and NMFS is implementing the following changes to limited entry fixed gear trip limits south of 36° N. lat.: change to ''2,000 (907 kg) lb per week''

in periods 1–6, on January 1, through the end of the year. The Council also recommended and NMFS is implementing the following changes to open access fishery trip limits south of 36° N. lat.: change to ''300 lb (136 kg) per day, or 1 landing per week of up to 1,600 lb (726 kg), not to exceed 3,200 lb (1,452 kg) per 2 months'' in periods 1–6, on January 1, through the end of the year.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, West Coast Region, NMFS, during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective December 3, 2013.

At the September Council meeting, the Council recommended trip limit changes for sablefish and deeper nearshore rockfish be implemented as quickly as possible during the November–December two-month cumulative limit period in 2013. At the November Council meeting, the Council recommended trip limit changes for sablefish be implemented January 1, 2014 or as quickly as possible thereafter. There was not sufficient time after these meetings to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the PCGFMP and applicable law. The adjustments to management measures in this document affect commercial fisheries in Washington, Oregon and California.

These adjustments to 2013 trip limits for sablefish and deeper nearshore rockfish must be implemented in a timely manner, as quickly as possible during the November–December two-month cumulative limit period: to allow limited entry fixed gear and open access fixed gear fishermen an opportunity to harvest their limits for sablefish without exceeding the 2013 ACL north of 36° N. lat. or the 2013 ACL south of 36° N. lat.; and to allow limited entry fixed gear and open access fixed gear fishermen to retain higher limits for deeper nearshore rockfish, without exceeding the ACL. These adjustments to 2014 management measures must be implemented in a timely manner, by January 1, 2014 or as quickly as possible thereafter: to allow limited entry fixed gear and open access fixed gear fishermen an opportunity to plan for and harvest their limits for sablefish without exceeding the 2014 ACL north of 36° N. lat. or the 2014 ACL south of 36° N. lat. These changes in the 2013 and 2014 limited entry fixed gear and open access fixed gear fisheries must be implemented in a timely manner so that fishermen are allowed increased opportunities to harvest available healthy stocks, and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, ACLs. If this rule is not implemented immediately, the public could have incorrect information regarding allowed limited entry fixed gear and open access trip limits which would cause confusion and be inconsistent with the intent of the Council. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change by December 3, 2013, allows harvest as intended by the Council, consistent with the best scientific information available. These changes allow harvest in fisheries that are important to coastal communities and in a manner that prevents ACLs of overfished and target species from being exceeded.

No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established for 2013–2014.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the PCGFMP goals and objectives of managing for appropriate harvest levels while providing for year-round fishing and marketing opportunities.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: November 29, 2013.

Karen Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, 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.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Tables 2 (North) and 2 (South) to part 660, subpart E are revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

10/2013 and 2014

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]						
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]						
3	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[1/]						
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months						
5	**Pacific ocean perch**	1,800 lb/ 2 months						
6	**Sablefish**	1,850 lb/ week, not to exceed 5,500 lb/ 2 months	950 lb/ week, not to exceed 2,850 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months						
8	**Shortspine thornyhead**	2,500 lb/ 2 months	2,000 lb/ 2 months			2,500 lb/ 2 months		
9	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.						
10	**Arrowtooth flounder**							
11	**Petrale sole**							
12	**English sole**							
13	**Starry flounder**							
14	**Other flatfish[3/]**							
15	**Whiting**	10,000 lb/ trip						
16	**Minor shelf rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month						
17	**Canary rockfish**	CLOSED						
18	**Yelloweye rockfish**	CLOSED						
19	**Minor nearshore rockfish & Black**							
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue rockfish[4/]						
21	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish						
22	**Lingcod[5/]**	400 lb/ month	CLOSED	CLOSED	800 lb/ 2 months		400 lb/ month	CLOSED
23	**Pacific cod**	1,000 lb/ 2 months						
24	**Spiny dogfish**	100,000 lb/ 2 months	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Longnose skate**	Unlimited						
26	**Other fish[6/]**	Unlimited						

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

11/12/2013 and 2014

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]						
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)						
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish						
4	**Splitnose rockfish**	40,000 lb/ 2 months						
5	**Sablefish**							
6	40°10' N. lat. - 36°00' N. lat.	1,850 lb/ week, not to exceed 5,500 lb/ 2 months	950 lb/ week, not to exceed 2,850 lb/ 2 months					
7	South of 36°00' N. lat.	1,880 lb/ week	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months						
9	**Shortspine thornyhead**							
10	40°10' N. lat. - 34°27' N. lat.	2,500 lb/ 2 months	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months						
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.						
13	**Arrowtooth flounder**							
14	**Petrale sole**							
15	**English sole**							
16	**Starry flounder**							
17	**Other flatfish[3/]**							
18	**Whiting**	10,000 lb/ trip						
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish (including Bocaccio and Chilipepper between 40°10' - 34°27' N. lat.)**							
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.						
21	South of 34°27' N. lat.	4,000 lb/ 2 months	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months	4,000 lb/ 2 months		
22	**Chilipepper**							
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow rockfish and bocaccio limits - - See above						
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA						
25	**Canary rockfish**	CLOSED						
26	**Yelloweye rockfish**	CLOSED						
27	**Cowcod**	CLOSED						
28	**Bronzespotted rockfish**	CLOSED						
29	**Bocaccio**							
30	40°10' N. lat. - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow rockfish & chilipepper limits - - See above						
31	South of 34°27' N. lat.	500 lb/ 2 months	300 lb/ 2 months	CLOSED	300 lb/ 2 months	500 lb/ 2 months		

TABLE 2 (South)

TABLE 2 (South)

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
32	**Minor nearshore rockfish & Black rockfish**							
33	Shallow nearshore	1,000 lb/ 2 months	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
34	Deeper nearshore							
35	40°10' N. lat. - 34°27' N. lat.	1,000 lb/ 2 months	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
36	South of 34°27' N. lat.		500 lb/ 2 months		600 lb/ 2 months			
37	California scorpionfish	1,200 lb/ 2 months	1,200 lb/ 2 months[6/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months		
38	**Lingcod[4/]**	400 lb/ month / CLOSED	CLOSED		800 lb/ 2 months			400 lb/ month / CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	100,000 lb/ 2 months	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
41	**Longnose skate**	Unlimited						
42	**Other fish[5/]**	Unlimited						

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Tables 3 (North) and 3 (South) to part 660, subpart F are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

TABLE 3 (North)

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]						
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]						
3	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[1/]						
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed						
5	**Pacific ocean perch**	100 lb/ month						
6	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months					
7	**Thornyheads**	CLOSED						
8	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.						
9	**Arrowtooth flounder**							
10	**Petrale sole**							
11	**English sole**							
12	**Starry flounder**							
13	**Other flatfish[3/]**							
14	**Whiting**	300 lb/ month						
15	**Minor shelf rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month						
16	**Canary rockfish**	CLOSED						
17	**Yelloweye rockfish**	CLOSED						
18	**Minor nearshore rockfish & Black rockfish**							
19	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish						
20	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish						
21	**Lingcod[5/]**	400 lb/ month	CLOSED		400 lb/ month			CLOSED
22	**Pacific cod**	1,000 lb/ 2 months						
23	**Spiny dogfish**	100,000 lb/ 2 months	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited						
25	**Other fish[6/]**	Unlimited						

Table 3 (North). Continued

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*							
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.						
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*							
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

TABLE 3 (North) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

10/12/013 and 2014

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]						
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)						
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish						
4	**Splitnose rockfish**	200 lb/ month						
5	**Sablefish**							
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months					
7	South of 36°00' N. lat.	380 lb/ day, or 1 landing per week of up to 1,800 lb, not to exceed 3,800 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Thornyheads**							
9	40°10' N. lat. - 34°27' N. lat.	CLOSED						
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months						
11	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.						
12	**Arrowtooth flounder**							
13	**Petrale sole**							
14	**English sole**							
15	**Starry flounder**							
16	**Other flatfish[3/]**							
17	**Whiting**	300 lb/ month						
18	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**							
19	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months		CLOSED	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	1,000 lb/ 2 months	750 lb/ 2 months		750 lb/ 2 months	1,000 lb/ 2 months		
21	**Canary rockfish**	CLOSED						
22	**Yelloweye rockfish**	CLOSED						
23	**Cowcod**	CLOSED						
24	**Bronzespotted rockfish**	CLOSED						
25	**Bocaccio**							
26	40°10' N. lat. - 34°27' N. lat.	200 lb/ 2 months		CLOSED	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	200 lb/ 2 months	100 lb/ 2 months		100 lb/ 2 months	200 lb/ 2 months		

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) cont'd

		NOV-DEC 2013	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Minor nearshore rockfish & Black rockfish**							
29	Shallow nearshore	1,000 lb/ 2 months	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
30	Deeper nearshore							
31	40°10' N. lat. - 34°27' N. lat.	1,000 lb/ 2 months	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
32	South of 34°27' N. lat.		500 lb/ 2 months		600 lb/ 2 months			
33	California scorpionfish	1,200 lb/ 2 months		CLOSED	1,200 lb/ 2 months			
34	**Lingcod**[4/]	400 lb/ month	CLOSED	CLOSED	400 lb/ month			CLOSED
35	**Pacific cod**	1,000 lb/ 2 months						
36	**Spiny dogfish**	100,000 lb/ 2 months	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited						
38	**Other fish**[5/]	Unlimited						
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
41	*40° 10' N. lat. - 38° 00' N. lat.*	*100 fm line*[1/] *- 200 fm line*[1/]		*100 fm line*[1/] *- 150 fm line*[1/]				*100 fm line*[1/] *- 200 fm line*[1/]
42	*38° 00' N. lat. - 34° 27' N. lat.*	*100 fm line*[1/] *- 150 fm line*[1/]						
43	*South of 34° 27' N. lat.*	*100 fm line*[1/] *- 150 fm line*[1/] *along the mainland coast; shoreline - 150 fm line*[1/] *around islands*						
44		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).						
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
46	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2013–29021 Filed 11–29–13; 4:15 pm]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 78, No. 232
Tuesday, December 3, 2013

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. FSIS–2008–0017]

Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for its proposed rule on the descriptive designation of needle- or blade-tenderized (mechanically tenderized) beef products that appeared in the **Federal Register** on June 10, 2013. FSIS is reopening this comment period for 21 days because the extended comment period on this proposed rule closed during the recent partial Government shutdown.

DATES: The Agency must receive comments by December 24, 2013.

ADDRESSES: Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov/.* Follow the on-line instructions at that site for submitting comments.

Mail, including CD–ROMs, etc.: Send to Docket Room Manager, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.

Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163B, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2008–0017. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495, or by Fax: (202) 720–2025.

SUPPLEMENTARY INFORMATION: On June 10, 2013, FSIS published a notice of proposed rulemaking in the **Federal Register,** ''Descriptive Designation for Needle- or blade-tenderized (Mechanically Tenderized) Beef Products'' (78 FR 34589). The Agency proposed to require the use of the descriptive designation ''mechanically tenderized'' on the labels of raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with marinade or solution, unless these products are to be fully cooked at an official establishment. The Agency proposed to require that the product name for the beef products include the descriptive designation ''mechanically tenderized'' and an accurate description of the beef component. The Agency also proposed to require that the print for all words in the product name appear in the same style, color, and size and on a single-color contrasting background.

In addition, FSIS proposed to require that the labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions include validated cooking instructions.

FSIS also announced that it had posted on its Web site guidance for developing validated cooking instructions for mechanically tenderized product.

In response to requests from trade associations for additional time to provide comments, FSIS extended the original comment period until October 8, 2013 (78 FR 48631; Aug. 9, 2013). However, October 8, 2013, fell during the partial Government shutdown that occurred from October 1 to October 16. During this period, Agency personnel were unavailable to respond to public inquiries concerning the proposal, to file public comments in the administrative record for the rulemaking, or to upload comments to the regulations.gov Web page. Therefore, to provide the public with a full opportunity to comment on the proposed rule and associated guidance document, FSIS has decided to reopen the comment period until December 24, 2013. FSIS invites interested persons to submit their comments by that date.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In

addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on November 26, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–28840 Filed 12–2–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1012; Directorate Identifier 2013–CE–037–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for British Aerospace Regional Aircraft Jetstream Series 3101 and Jetstream Model 3201 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as stress corrosion cracking of the main landing gear yoke pintle housing on a Jetstream series 3100 airplane. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 17, 2014.

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 proposed AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 1292 675207, fax: +44 1292 675704; email: *RApublications@baesystems.com;* Internet: *http://www.jetstreamcentral.com.* You may review this 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 proposed 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: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1012; Directorate Identifier 2013–CE–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2013–0206, dated September 9, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An occurrence of Jetstream 3100 main landing gear (MLG) failure after landing was reported. The subsequent investigation revealed stress corrosion cracking of the MLG yoke pintle housing as a root cause of the MLG failure. Degradation of the surface protection by abrasion can occur when the forward face of the yoke pintle rotates against the pintle bearing, which introduces corrosion pits and, consequently, stress corrosion cracking.
>
> This condition, if not corrected, could lead to structural failure of the MLG possibly resulting in loss of control of the aeroplane during take-off or landing runs.
>
> To address this potential unsafe condition, BAE Systems (Operations) Ltd issued Service Bulletin (SB) 32–JM7862 to provide instruction for installation of a protective washer fitted at the forward spigot on both, left hand (LH) and right hand (RH), MLG.
>
> For the reasons described above, this AD requires installation of a washer to protect the MLG at the forward face of the yoke pintle.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1012.

Relevant Service Information

British Aerospace Regional Aircraft has issued British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JM7862, Revision 1, dated May 7, 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 Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 66 products of U.S. registry. We also estimate that it would take about 15 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $84,150, or $1,275 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft: Docket No. FAA–2013–1012; Directorate Identifier 2013–CE–037–AD.

(a) Comments Due Date

We must receive comments by January 17, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to British Aerospace Regional Aircraft Jetstream Series 3101 and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as stress corrosion cracking of the main landing gear yoke pintle housing on a Jetstream series 3101 airplane. We are issuing this proposed AD to add protective measure to prevent abrasion and subsequent corrosion from building on the main landing gear (MLG) yoke pintle housing. This condition if not corrected could cause structural failure of the MLG resulting in loss of control during take-off or landing.

(f) Actions and Compliance

Unless already done, do the following actions as applicable in paragraphs (f)(1) through (f)(3) of this AD:

(1) At the next scheduled MLG removal after the effective date of this AD, modify the LH and RH MLG installation at the forward spigot following the accomplishment instructions of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JM7862, Revision 1, dated May 7, 2013.

(2) As of the effective date of this AD, do not install any LH or RH MLG on Jetstream Series 3101 airplanes and Jetstream Model 3201 airplanes unless it is found to be in compliance with the requirements of paragraph (f)(1) of this AD.

(g) Credit for Actions Done in Accordance With Previous Service Information

This AD allows credit for modification of an MLG to comply with the requirements of paragraph (f)(1) of this AD if already done before the effective date of this AD, following BAE Systems (Operations) Ltd SB 32–JM7862, original issue, dated April 8, 2013.

(h) 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: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@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.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0206, dated September 9, 2013 for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1012. For service information related to this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 1292 675207, fax: +44 1292 675704; email: *RApublications@baesystems.com;* Internet: *http://www.jetstreamcentral.com.* You may review this 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.

Issued in Kansas City, Missouri, on November 25, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–28872 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Proposed Priorities, Requirements, and Definitions—Charter Schools Program (CSP) Grants for National Leadership Activities

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

CFDA NUMBER: 84.282N.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement proposes priorities, requirements, and definitions for CSP Grants for National Leadership Activities and may use these priorities, requirements, and definitions for a competition in fiscal year (FY) 2013 and later years. The Assistant Deputy Secretary is taking this action to ensure that projects funded with CSP Grants for National Leadership Activities address key policy issues currently facing charter schools and impact stakeholders on a national scale.

DATES: We must receive your comments on or before January 2, 2014.

ADDRESSES: Address all comments about this notice to Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970.

If you prefer to send your comments by email, use the following address: *brian.martin@ed.gov.* You must include the term ''National Leadership Activities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Brian Martin. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this document. To ensure that your comments have maximum effect in developing the final priorities, requirements, and definitions, we urge you to identify clearly the specific proposed priority, requirement, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about this notice in room 4W224, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model by—

(1) Providing financial assistance for the planning, program design, and initial implementation of charter schools;

(2) Evaluating the effects of charter schools, including the effects on students, student achievement, student growth, staff, and parents;

(3) Expanding the number of high-quality charter schools available to students across the Nation; and

(4) Encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.

The purpose of the CSP Grants for National Leadership Activities is to support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope.

Program Authority: 20 U.S.C. 7221–7221i. CSP Grants for National Leadership Activities are authorized under 20 U.S.C. 7221d(a).

Proposed Priortities: This notice contains five proposed priorities.

Background

The Department most recently conducted competitions for CSP Grants for National Leadership Activities in FYs 2006 and 2010. In those competitions, we invited applications for projects designed to improve stakeholder capacity to support high-quality charter schools but did not require or give competitive preference to particular types of projects. As a result, applications submitted under the competition varied considerably in scope and content.

To ensure that projects funded with CSP Grants for National Leadership Activities in future years address key policy issues facing charter schools on a national scale, the Department proposes the priorities in this notice. These priorities take into consideration the continuing growth of charter schools across the nation and the increasing need to support the capacity and oversight of all charter schools. The priorities also recognize the important role that charter schools can play in improving educational outcomes for students with disabilities and English Learners and in creating personalized, technology-based learning environments for high-need students (as defined in this notice).

Proposed Priority 1—Improving Efficiency Through Economies of Scale

Background

Traditional public school districts benefit from economies of scale across multiple aspects of school operations. Compared to charter schools, traditional public schools tend to have higher student enrollment, which may result in lower average costs per student for various activities or a wider variety of available support services. For example, traditional public school districts can make mass purchases of supplies, equipment, and non-academic services, including facilities maintenance, food, data systems, insurance, and transportation services. These districts can consolidate academic services across a large number of schools, including services such as curriculum development and alignment, student assessments, and professional development for teachers and school leaders. They can consolidate services for specific student populations, such as students with disabilities or English Learners. They can provide a range of arts and athletic opportunities for their students. They have the ability, through different funding structures, sustained economies of scale, and historical relationships with colleges, universities, and nonprofit organizations, to recruit teachers and leaders more broadly, and in a more structured way, than charter schools.

Charter schools are explicitly designed to have the autonomy to employ innovative, promising

approaches to public education. This autonomy, however, can limit charter schools' ability to take advantage of the economies of scale available to traditional public school districts, impeding the charter school sector's ability to improve its performance and scale up high-quality charter school models.

As the charter school sector continues to grow, there is an increasing opportunity for charter schools to form consortia to achieve the benefits of economies of scale and, thus, improve performance and increase the number of high-quality charter schools nationwide. The Department proposes this priority to support such efforts.

Proposed Priority

This proposed priority is for projects of national significance and scope that promote shared systems for acquiring goods or services to achieve efficiencies in the use of time, staff, money, services for special populations, or other resources for the purpose of creating and sustaining high-quality charter schools (as defined in this notice).

An applicant addressing this priority is not required to apply as part of a partnership or consortium, but must include plans for developing a consortium, or consortia of charter schools that will share systems for acquiring goods or services. The plans must include detailed descriptions (including supporting documentation) of the following:

(1) The activities of the proposed consortium or consortia and demonstrate how and to what extent the activities will achieve efficiencies in the use of time, staff, money, services for special populations, or other areas related to operating high-quality charter schools;

(2) Proposed members of the consortium or consortia, how the composition of this consortium or consortia contributes to achieving efficiencies, the specific activities each member will carry out, and how specific activities will include entities outside of the network that the lead applicant currently manages;

(3) How proposed project activities will help create and sustain high-quality charter schools;

(4) How information about the proposed project's activities will be disseminated primarily to charter schools as the primary stakeholder group, and secondarily to other stakeholders, such as charter school support organizations and authorized public chartering agencies, as appropriate, at the charter school national level (as defined in this notice);

(5) How the dissemination strategy will include assembling a community of practice (as defined in this notice) for the stakeholder group(s) served; and

(6) The national significance and scope of the proposed project.

Proposed Priority 2—Improving Accountability

Background

While there are many high-performing charter schools across the nation, charter school performance varies significantly and too many persistently low-performing charter schools are not held accountable for their results. (For example, see the January 30, 2013 report from the Center for Research on Education Outcome's entitled, ''Charter School Growth and Replication'', which analyzes student performance and progress data from 25 States, and the District of Columbia, that have enacted charter school laws.) [1]

Despite 43 distinct sets of State laws governing charter schools, and almost 1,000 different entities authorizing charter schools, there are some common promising practices that provide the degree of oversight necessary to ensure that charter schools deliver on their promises. Over the lifespan of a charter school, authorizing practices will have a direct impact on the quality of the charter school sector. Authorizers are responsible for conducting rigorous application reviews to ensure new schools are of a high quality. Once schools are open, accountability practices for charter schools need to be strengthened within States. For example, charter school renewal should occur regularly enough to ensure accountability and provide an opportunity for amendment of the charter or closure of poor-performing schools. Authorizers should have clear policies to hold schools accountable more consistently for meeting their academic, financial, and operational performance goals, as well as for complying with all applicable laws, including civil rights laws requiring equal access.

Through the development, refinement, and dissemination of authorizers' promising practices in areas such as charter school approval, performance monitoring, charter contract renewal, and charter school closure, the Department expects authorizers to hold charter schools more accountable and to increase the number of high-quality seats available to students. These promising practices will help ensure that new charter schools have demonstrated that they are positioned to succeed, poor-performing charter schools are closed, and high-quality charter schools are replicated and expanded to serve more students.

Proposed Priority

This proposed priority is for projects of national significance and scope that are designed to improve authorized public chartering agencies' capacity to conduct rigorous application reviews, monitor and oversee charter schools using data and measurable performance goals, close underperforming schools, replicate and expand high-performing schools, maintain a portfolio of high-quality charter schools, and evaluate and communicate the performance of that portfolio.

Applicants addressing this priority must provide detailed descriptions (including supporting documentation) of the following:

(1) How the proposed project will improve, within a variety of communities in one or more States, authorized public chartering agencies' capacity to:

i. Approve only high-quality charter schools that meet the standards of a rigorous application process and review;

ii. Monitor and oversee charter schools through the regular collection of data, including student performance and financial data, and measurable performance goals;

iii. Identify schools eligible for renewal and those that should be closed through clear renewal and revocation criteria;

iv. Maintain portfolios of high-quality charter schools by evaluating authorizer and portfolio performance and disseminating information on the performance of those portfolios;

(2) The applicant's prior success in improving, within a variety of communities in one or more States, authorized public chartering agencies' capacity to:

i. Approve only high-quality charter schools that meet the standards of a rigorous application process and review;

ii. Monitor and oversee charter schools through the regular collection of data, including student performance and financial data, and measurable performance goals;

iii. Identify schools eligible for renewal and those that should be closed through clear renewal and revocation criteria;

iv. Maintain portfolios of high-quality charter schools by evaluating authorizer and portfolio performance and disseminating information on the performance of those portfolios, and help improve the ability of other

[1] *http://credo.stanford.edu/.*

authorized public chartering agencies to produce similar results;

(3) How dissemination activities focus on authorized public chartering agencies as the primary stakeholder group, and secondarily on other stakeholders, such as charter school support organizations or charter schools, as appropriate, at the charter school national level;

(4) How the dissemination strategy will include assembling a community of practice for the stakeholder group(s) served; and

(5) The national significance and scope of the proposed project.

Proposed Priority 3—Students With Disabilities

Background

As public schools, it is essential that charter schools provide equitable access and appropriate educational services to all students, regardless of disability, as set forth in the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 and the Department's Section 504 regulations. A GAO report released in June, 2012 found that charter schools enrolled a lower percentage of students with disabilities than traditional public schools. This discrepancy may have many contributing factors that are likely to vary from school to school. Regardless, charter schools should have the capacity to serve all students with disabilities irrespective of severity or type of disability. The Department believes that charter schools are well-positioned to develop new approaches to meeting the needs of students with disabilities and improve educational outcomes for these students. The Department proposes a priority for projects designed to improve charter schools' capacity, through a variety of methods, to recruit and serve students with disabilities more effectively.

Proposed Priority

This proposed priority is for projects of national significance and scope that are designed to increase access to charter schools for students with disabilities and increase the schools' enrollment, as well as improve achievement (including student achievement and student growth) and attainment (including high school graduation rates and college enrollment rates) for students with disabilities in charter schools, through one or both of the following activities:

(1) Developing strategies and tools to increase access to charter schools for students with disabilities and increase the schools' capacity to enroll students with disabilities, and improve student achievement, student growth, high school graduation rates, and college enrollment rates for students with disabilities.

(2) Disseminating promising practices that increase access to charter schools for students with disabilities and increase the schools' capacity to enroll students with disabilities; and improve student achievement, student growth, high school graduation rates, and college enrollment rates for students with disabilities.

Proposed Priority 4—English Learners

Background

From 2001 to 2010 the number of students identified as English Learners increased significantly, growing from approximately 3,700,000 to 4,660,275 nationwide. In 2011, the National Assessment of Educational Progress reports on mathematics, reading, and science showed a difference in scores between English Learners and non-English Learners of 49, 47, and 62 percent, respectively.[2] The Department believes that charter schools are well-positioned to develop new approaches to meeting the needs of English Learners and can play an integral role in closing the achievement and attainment gaps between English Learners and their peers. The Department proposes a priority for projects designed to improve charter schools' capacity, through a variety of methods, to recruit and serve English Learners more effectively.

Proposed Priority

This proposed priority is for projects of national significance and scope that are designed to increase access to charter schools for English Learners and increase the schools' enrollment, as well as improve achievement (including student achievement and student growth) and attainment (including English proficiency, high school graduation rates, and college enrollment rates) for English Learners in charter schools, through one or more of the following activities:

(1) Developing strategies and tools to increase access to charter schools for English Learners and increase the schools' capacity to enroll English Learners, and improve student achievement, student growth, English proficiency, high school graduation rates, and college enrollment rates for English Learner students.

(2) Disseminating promising practices that increase access to charter schools for English Learners and increase the schools' capacity to enroll English Learners, and improve student achievement, student growth, English proficiency, high school graduation rates, and college enrollment rates for English Learners.

Proposed Priority 5—Personalized Technology-Enabled Learning

Background

Learning models that blend traditional, classroom-based teaching and learning with virtual, online, or digital delivery of personalized instructional content offer the potential to transform public education and create significant improvements in students' achievement, growth, engagement, and non-cognitive skills. In order to achieve superior outcomes, the effective development and implementation of these models are essential.

In particular, technology-enabled learning tools must be functional, engaging, user-friendly, appropriate for students with diverse learning needs, and aligned with college-and-career-ready standards. Moreover, it is of great importance to ensure equitable access to and use of these tools and supports by high-need students.

In light of the operational autonomy that charter schools possess and the focus that many of these schools have on serving high-need students, charter schools are uniquely positioned to contribute to the development and implementation of instructional models that effectively incorporate technology-enabled personalized learning tools and supports for high-need students. The Department proposes this priority to stimulate and support such efforts.

Proposed Priority

This proposed priority is for projects of national significance and scope that are designed to improve achievement and attainment outcomes for high-need students through the development and implementation in charter schools of technology-enabled instructional models, tools, and supports that personalize instruction.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority,

[2] *http://nces.ed.gov/programs/coe/tables/table-ell-1.asp.*

we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

The Assistant Deputy Secretary for Innovation and Improvement proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect. By requiring that applicants provide a charter school logic model supporting their projects and restricting eligibility for grants to specific types of entities, the Department will ensure that grantees have the preparation and experience to be successful with a CSP Grant for National Leadership Activities.

Proposed Application Requirements

Logic Model

An applicant for a CSP Grant for National Leadership Activities must provide a charter school logic model (as defined in this notice) supporting its project.

Eligibility

Eligible applicants include (1) State educational agencies (SEAs) in States with a State statute specifically authorizing the establishment of charter schools; (2) authorized public chartering agencies; (3) public and private nonprofit organizations with a mission that explicitly includes supporting charter schools; and (4) public and private nonprofit organizations in partnership with an SEA, authorized public chartering agency, or a public or private nonprofit organization with a mission that explicitly includes supporting charter schools. Eligible applicants may apply as a group or consortium.

Note: The Secretary invites comment on this eligibility requirement, particularly regarding whether public and private nonprofit organizations should be required to have a mission that explicitly includes supporting charter schools and the elements that should be required to confirm eligibility.

Proposed Definitions

The Assistant Deputy Secretary for Innovation and Improvement proposes the following definitions for this program. We may apply one or more of these definitions in any year in which the program is in effect.

The proposed definitions for ''high-quality charter school'' and ''significant compliance issue'' are based on the definitions in the notice of final priorities, requirements, and definitions for the CSP Replication and Expansion grant program, published in the **Federal Register** on July 12, 2011 (76 FR 40898). The proposed definitions for ''graduation rate'' and ''student achievement'' are identical to the definitions in the Supplemental Priorities for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78510), and corrected on May 12, 2011 (76 FR 27637). The proposed definitions for ''student growth'' and ''high-need students'' are based on the definitions in the Supplemental Priorities for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78510), and corrected on May 12, 2011 (76 FR 27637). The proposed definition for ''charter school logic model'' is based on the definition of ''logic model'' in the Direct Grant Programs and Definitions That Apply to Department Regulations Notice of Proposed Rulemaking, published in the **Federal Register** on December 14, 2012 (77 FR 74392).

Charter school logic model means a well-specified conceptual framework that identifies key components of the proposed practice, strategy, or intervention (i.e., the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Charter school national level means, with respect to an applicant's dissemination strategy, that the strategy covers a wide variety of charter schools, authorized public chartering agencies, charter support organizations, and other stakeholder groups within multiple States across the country, including rural and urban areas.

Community of practice means a group of stakeholders that interacts regularly to solve a persistent problem or to improve practice in an area that is important to them and the success of the grant project.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

High-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English Learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

High-quality charter school means a school that shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increased student academic achievement and attainment for all students, including, as applicable, educationally disadvantaged students;

(2) Either (i) Demonstrated success in closing historic achievement gaps for the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA; or

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111 (b)(2)(C)(v)(II) of the ESEA and significant gains in student academic achievement have been made with all populations of students served by the charter school;

(3) Achieved results (including performance on statewide tests, annual high school graduation rates, college attendance rates, and college persistence rates where applicable and available) for low-income and other educationally disadvantaged students served by the charter school; and

(4) No significant compliance issues (as defined in this notice), particularly in the areas of student safety and financial management.

Significant compliance issue means a violation that did, will, or could lead to the revocation of a school's charter.

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in achievement data for an individual student between two or more points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

Final Priorities, Requirements and Definitions

We will announce the final priorities, requirements, and definitions in a notice in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

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

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

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

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

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

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

We are issuing these proposed priorities, requirements, and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. The Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

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

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

These proposed regulations contain information collection requirements that are approved by OMB under OMB control number 1894–0006; these proposed regulations do not affect the currently approved data collection.

We estimate that each applicant would spend approximately 176 hours of staff time to address the proposed requirements, prepare the application, and obtain necessary clearances. The total number of hours for all expected applicants is an estimated 7,040 hours. We estimate the total cost per hour of the applicant-level staff who will carry out this work to be $57 per hour. The total estimated cost for all applicants would be $401,280.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

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

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

Dated: November 26, 2013.

Nadya Chinoy Dabby,

Associate Assistant Deputy Secretary for the Office of Innovation and Improvement, delegated the authority to perform the functions and duties of the Assistant Deputy Secretary.

[FR Doc. 2013–28939 Filed 12–2–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–LAMR–13812; PPIMLAMRS0, PPMPSPD1Z.YM0000]

RIN 1024–AE12

Special Regulations, Areas of the National Park System, Lake Meredith National Recreation Area, Bicycling

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: Through the preparation of a Multi-Use Trail Environmental Assessment, the National Park Service has decided to construct an unpaved, multi-use recreational trail in Lake Meredith National Recreation Area. The multi-use trail will be approximately 22 miles in length and be open to pedestrian and bicycle use only. National Park Service regulations require promulgation of a special regulation to designate new routes for bicycle use off park roads and outside developed areas. The multi-use trail will consist of five contiguous sections constructed in five phases, as resources become available. This multi-use trail will help address the lack of land-based recreational opportunities in the region; increase the availability of interpretive resources in the recreation area; provide a firebreak at the urban-wildland interface; and improve access for emergency response personnel.

DATES: Comments must be received by February 3, 2014.

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE12, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79036
- *Hand Deliver to:* Superintendent's Office, Fritch, TX.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arlene Wimer, Chief of Resource Management, Lake Meredith National Recreation Area, at 806–857–0309 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Background

Congress established Lake Meredith National Recreation Area (LAMR or recreation area) in 1990 ''to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters. . . .'' Situated approximately 35 miles north of Amarillo, Texas within Potter, Moore, Hutchinson, and Carson counties, LAMR is approximately 45,000 acres in size and is the largest public landmass in the Texas Panhandle.

Purpose of Multi-Use Trail

Recreational Opportunities

LAMR provides water-based public recreational opportunities such as fishing, boating, water skiing, and swimming. However, dropping water levels have caused a substantial loss of public access to the lake and a corresponding reduction in water-based recreational opportunities. Visitation to the recreation area has declined over the last 10 years, and lower water levels and reduced access could be a contributing factor to this decline in use. Water levels are not expected to increase in the near future, and the addition of a multi-use trail could provide visitors with an alternative, land-based form of recreation which may attract more visitors to LAMR.

LAMR provides some land-based recreational opportunities, such as hiking, horseback riding, hunting, off-road vehicle use, and camping. Over the past several years, bicycling has become more popular in the Texas Panhandle, as evidenced by increased bike use at nearby Palo Duro Canyon State Park. A multi-use trail at LAMR will help address the increasing demand for bike trails in the Texas Panhandle. The multi-use trail will also provide additional hiking opportunities on the trail, and primitive camping opportunities in Turkey Creek Canyon.

Interpretive Resources

LAMR contains natural and cultural resources that are unique to the region. The natural and geologic resources of the recreation area have enabled human survival, subsistence, and adaptation that have resulted in a continuum of human presence in the area for more than 13,000 years. Cultural sites in LAMR and the adjacent Alibates Flint Quarries National Monument offer views of lifeways in cultural periods from the Paleo Indians (9,500 BC–6,000 BC) to the present day. The exposed geologic features on the walls of the Canadian River valley (i.e. the ''breaks'') reveal active geologic processes that are easily visible to an extent not present elsewhere in the region. The topography and geography of the Canadian River breaks create a divergence from the surrounding landscape that offers scenic values and opportunities not found elsewhere in the region.

Despite these extraordinary resources, LAMR lacks interpretive facilities to allow visitors to fully understand and

appreciate them. The proposed multi-use trail will allow visitors to experience additional areas of the recreation area that visitors cannot currently access, while educating and promoting stewardship for LAMR's natural and cultural resources. Kiosks will be installed at the two trail heads located at Harbor Bay, providing visitors with trail rules, maps, advisories, closures, and safety precautions. Interpretive signage and trail markers will be primitive and placed at appropriate locations along the trail to provide information on cultural and natural resources and to ensure visitors remain on trails and do not get lost or damage recreation area resources.

Wildfires and Public Safety

Wildfires pose a substantial threat to public safety in and around LAMR. The elimination of grazing operations in the recreation area and periods of prolonged drought have increased the potential for catastrophic wildfire events. The number and location of roads and trails in the recreation area are limited, and as such, firefighting crews have difficulty accessing certain areas of the recreation area. The proposed multi-use trail will serve as a firebreak and will provide firefighting crews additional access to previously inaccessible areas in the event of a wildfire. Construction of the trail will also provide emergency service access to hard to reach areas of the recreation area, reducing response times for emergency and rescue teams and improving visitor safety.

Environmental Assessment

In January 2010, LAMR published the Multi-Use Trail Environmental Assessment (EA). The EA evaluated two alternatives. Under the no action alternative (Alternative A), the multi-use trail would not be constructed. Under the action alternative (Alternative B), the multi-use trail would be constructed. On January 17, 2012, the National Park Service (NPS) signed a Finding of No Significant Impact (FONSI) which identified Alternative B as the selected action and concluded that constructing the multi-use trail will not have a significant effect on the human environment. Under Alternative B, LAMR will construct the multi-use trail in five phases totaling approximately 22 miles. Phase One will be located in the Harbor Bay and Fritch Canyon area; Phase Two will be between Harbor Bay and Short Creek; Phase Three will be located between Short Creek and South Turkey Creek; Phase Four will start at the mouth of South Turkey Creek and continue up the canyon; and Phase Five will be located between Fritch Fortress and the northern portion of phase one. Construction of each phase will occur as funding becomes available. To date, the park has constructed two miles of trail and plans to complete an additional six miles this fall 2013.

The EA and FONSI, which contain a full description of the purpose and need for taking action, the alternatives considered, public comments on the alternatives, maps of the proposed multi-use trail, and the environmental impacts associated with the project, may be viewed on the recreation area's planning Web site at *http://parkplanning.nps.gov/lamr,* by clicking on the link entitled ''Archived Projects'' and then clicking the link entitled ''Lake Meredith Recreation Area Multi-Use Trail'' and then clicking on the link entitled ''Document List.''

Proposed Rule

This proposed rule complies with the general requirement of 36 CFR 4.30, which requires a special regulation to designate new bicycle routes off park roads and outside of developed areas. However, because the planning process for this trail was completed prior to the recent revisions to 36 CFR 4.30 (as stated in the preamble to the final rule which can be found at 77 FR 39927, July 6, 2012), LAMR is not required to comply with the new requirements for bicycle routes. The proposed rule would add a new paragraph (h) to the special regulations for LAMR (36 CFR 7.57), authorizing designation of the proposed 22-mile-long multi-use trail as a route for bicycle use. The proposed rule would also authorize the Superintendent to impose closures or restrictions for bicycle use on designated routes after taking into consideration public health and safety, resource protection, and other management activities and objectives, provided public notice is given under 36 CFR 1.7.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations for Trail Management in Lake Meredith Recreation Area'' which is available online at *http://parkplanning.nps.gov/lamr* by clicking on the link entitled ''Archived Projects'' and then clicking the link entitled ''Lake Meredith Recreation Area Multi-Use Trail'' and then clicking on the link entitled ''Document List.''

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A

statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. During the EA process, NPS consulted with the 10 Native American groups associated with LAMR and determined that there are no potential effects.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We prepared the EA to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a FONSI. A copy of the EA and FONSI can be found online at *http://parkplanning.nps.gov/lamr* by clicking on the link entitled ''Archived Projects'' and then clicking the link entitled ''Lake Meredith Recreation Area Multi-Use Trail'' and then clicking on the link entitled ''Document List,'' or may be obtained by contacting: Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79036.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

Clarity of This Rule

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information: The primary authors of this regulation are Arlene Wimer, Chief of Resources, Lake Meredith National Recreation Area; Cheryl Eckhardt, Environmental Quality Specialist, National Park Service Intermountain Region; and Jay P. Calhoun, Regulations Program Specialist, National Park Service.

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.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section.

List of Subjects in 36 CFR Part 7

National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201 (2001).

■ 2. In § 7.57 add paragraph (h) to read as follows:

§ 7.57 Lake Meredith National Recreation Area.

* * * * *

(h) *Bicycling.* (1) The Superintendent may designate for bicycle use routes or portions of routes in the following sections of the park's multi-use recreational trail:

(i) Harbor Bay-Fritch Canyon area (approximately 5.7 miles);

(ii) Harbor Bay Short-Creek area (approximately 3.3 miles);

(iii) Short Creek-South Turkey Creek area (approximately 2.8 miles);

(iv) South Turkey Creek area (approximately 4.4 miles); and

(iv) Fritch Fortress area (approximately 5.2 miles).

(2) Designation of bicycle routes or portions of routes shall be implemented

with a written determination that the route is open for public use and that such bicycle use is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources. Notice may be provided by posting signs and identifying routes on maps which shall be available in the office of the Superintendent and on the park's Web site.

(3) The Superintendent may open or close designated bicycle routes, or portions thereof, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, carrying capacity, and other management activities and objectives.

(i) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(ii) Violating a closure, condition, or restriction is prohibited.

Dated: November 20, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–28894 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2013–0698; FRL–9903–73–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the State of Missouri which revises the written reporting requirements for maintenance, start-up, or shutdown activities; updates the information a source operator must provide to the department when a notice of excess emissions is received; and corrects references in the reporting and record keeping section.

DATES: Comments must be received on or before January 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0698, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2013–0698. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

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

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is proposing to approve revisions to the Missouri SIP submitted to EPA on July 8, 2010 which amend 10 CSR 10–6.050 *Start-up, Shutdown, and Malfunction Conditions.* Specifically, Missouri amended subsection 3(B) to remove the option for verbal notification and therefore only written notification is allowed for any maintenance, start-up, or shutdown activity which is expected to cause an excess release of emissions that exceeds one hour. This change makes the written notification requirements consistent for subsections 3(B) which covers maintenance, start-up and shutdown, and 3(A) which covers malfunctions. Subparagrah 3(B)3 was removed because the requirement was only applicable to malfunctions which is addressed in subsection 3(A).

The remaining revisions to the rule are administrative changes which revise the rule to be consistent with the state's standard rule format or make other minor clarifying changes. Subparagraphs 3(B)3 through 3(B)9 were renumbered to adjust for the removal of item 3(B)3. Subparagraph 3(C)2 includes minor administrative changes to meet the state's standard rule format. Subparagraph 3(C)2A and 3(C)2B were removed because they were redundant and replaced with references to the appropriate applicable subsections of the rule. Subsection 4(B) was revised to be consistent with the state's standard rule format.

In a separate action on February 22, 2013, EPA has proposed to address a petition by Sierra Club related to SSM provisions, including 10 CSR 10–6.050(3)(C) (78 FR 12459). In this separate action, EPA proposed to deny the petitioner's request that EPA take action under Clean Air Act (CAA) section 110 (k)(5) or (6) to direct the

state to revise this provision. The revisions proposed in today's action do not address the sections of the regulation challenged by the Sierra Club in its petition. The revisions proposed in today's action clarify and strengthen the Missouri SIP. By removing the option for oral notification in 10 CSR 10–6.050(3)(B), and requiring written notification, the Missouri SIP is more stringent. The revision in 10 CSR 10–6.050(3)(C)2. A. clarifies the notification requirements for malfunctions by referring to section 10 CSR 10–6.050(3)(A). The revision in 10 CSR 10–6.050 (3)(C)2.B. clarifies the general notification requirements for maintenance, startup, or shutdown activities by referring to the general notification requirements set forth in 10 CSR 10–6.050(3)(B).

The revisions proposed in today's action are consistent with CAA requirements for SIP provisions and do not violate the anti-backsliding provisions in section 110(l) or section 193 of the CAA because they are SIP strengthening and do not interfere with any applicable requirements concerning attainment or reasonable further progress nor do they affect control measures in effect prior to the 1990 CAA Amendments related to nonattainment areas. Further, these proposed revisions are consistent with the action proposed by EPA on February 22, 2013 as mentioned above (78 FR 12459).

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is proposing to approve the request to amend the Missouri SIP by approving the state's request to amend 10 CSR 10–6.050 *Start-Up, Shutdown, and Malfunction* to update written reporting requirements, correct references, and other minor clarifying changes. Approval of these revisions will ensure consistency between state and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: November 20, 2013.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2013–28947 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2013–0164; FRL–9903–75–Region 3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Virginia; Control of Emissions From Existing Sewage Sludge Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a section plan submitted by the Commonwealth of Virginia for sewage sludge incineration (SSI) units. The section plan contains a state rule for existing SSI units and was submitted as a result of the March 21, 2011 promulgation of Federal new source performance standards (NSPS) and emission guidelines for SSI units. This action is being taken under sections of the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0164 by one of the following methods:

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

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0164, Kathleen Cox, Associate Director, Office of Air Permits and Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the

Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0164. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, at (215) 814–2039, or by email at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires States to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated emission guidelines. Section 129(b)(3) requires EPA to promulgate a federal plan (FP) within two years from the date on which the emission guidelines, or revision to the emission guidelines, is promulgated. The FP is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The FP remains in effect until the state submits and receives EPA approval of its section 111(d)/129 plan. State submittals under CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart MMMM, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates air pollutants that include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, and particulate matter (which includes opacity).

On December 12, 2012, the Virginia Department of Environmental Quality (VADEQ) submitted to EPA a formal section 111(d)/129 plan for SSI units. The submitted section 111(d)/129 plan was in response to the March 21, 2011 promulgation of Federal NSPS and emission guidelines requirements for SSI units, 40 CFR part 60, subparts LLLL and MMMM, respectively (76 FR 15372).

II. Summary of Virginia's Section 111(d)/129 Plan for Existing SSI Units

EPA has reviewed the Virginia section 111(d)/129 plan submittal in the context of the requirements of 40 CFR part 60, subparts B and MMMM, and part 62, subpart A. In this action, EPA is proposing to determine that the submitted section 111(d)/129 plan meets the above-cited requirements. Included within the section 111(d)/129 plan are regulations under the Virginia Administrative Code (VAC), specifically Article 55 of 9VAC5 Chapter 40, entitled ''Emission Standards for Sewage Sludge Incineration Units.'' A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

III. General Information Pertaining to Section 111(d)/129 Plan Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements

imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the section 111(d)/129 plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia section 111(d)/129 plan for SSI units submitted pursuant to 40 CFR part 60, subpart MMMM. Therefore, EPA is proposing to amend 40 CFR part 62, subpart VV to reflect this action. This approval is based on the rationale previously discussed and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d)/129 plan is limited to the provisions of 40 CFR parts 60 and 62 for existing SSI units, as referenced in the emission guidelines, subpart MMMM.

The EPA Administrator continues to retain authority for several tasks, as stipulated in 40 CFR § 60.5050 as well as the ''Plan Provisions'' section of Virginia's section 111(d)/129 plan submittal. This retention of federal authority includes the granting of waivers for performance tests.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing VADEQ's submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a VADEQ submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a VADEQ submission, to use VCS in place of a VADEQ submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's ''Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule for the approval of VADEQ's section 111(d)/129 plan for SSI units does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: November 15, 2013.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2013–28958 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2013–0678; FRL–9903–34–Region 5]

Proposal for Hospital/Medical/Infectious Waste Incinerator Negative Declaration for Designated Facilities and Pollutants: Michigan and Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is notifying the public that we have received from Michigan and Wisconsin negative declarations for Hospital/Medical/Infectious Waste Incinerators (HMIWI). The Michigan Department of Environmental Quality submitted on August 9, 2013 a negative declaration certifying that there are no HMIWI units currently operating in the

state of Michigan. The Wisconsin Department of Natural Resources submitted on July 15, 2013 a negative declaration certifying that there are no HMIWI units currently operating in the state of Wisconsin.

DATES: Comments must be received on or before January 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0678, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: nash.carlton@epa.gov.*
3. *Fax:* (312) 692–2543.
4. *Mail:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register,** EPA is amending 40 CFR part 62 to reflect the States' submittals of the negative declarations as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, we will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on any part of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: November 8, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–28964 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[EPA–HQ–OAR–2013–0684; FRL–9903–38–OAR]

Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations; Panel Closure Redesign

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: With this notice, the U.S. Environmental Protection Agency (EPA, or the Agency) proposes to approve the U.S. Department of Energy's (DOE, or the Department) planned change request to implement the Run-of-Mine Panel Closure System (ROMPCS) at the Waste Isolation Pilot Plant (WIPP) and to amend the WIPP Compliance Criteria to allow an EPA-approved panel closure other than the currently-required Option D design. Technical analyses demonstrate that, with the modified panel closure design, WIPP remains in compliance with the release limits set by the ''Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic (TRU) Radioactive Waste.'' The proposed changes do not lessen the requirements for complying with the Compliance Criteria, nor do these changes impact the technical approach that the EPA will employ when considering any future planned changes to the panel closure system. Compliance with environmental or public health regulations other than the EPA's disposal regulations and WIPP Compliance Criteria is not addressed by today's action. Today's notice marks the beginning of a 60-day public comment period on this proposed action.

DATES: Comments must be received on or before February 3, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0684, by one of the following methods—

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* to *a-and-r-docket@epa.gov;* Docket ID No. EPA–HQ–OAR–2013–0684.
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2013–0684. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the Agency may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. The EPA has established a docket for this action under Docket ID No. [EPA–HQ–OAR–2013–0684; FRL–9903–38–OAR]. Publicly available docket materials related to this action (e.g., the Technical Support document [TSD]) are available either electronically through *www.regulations.gov,* on the Agency's WIPP Web site (*http://www.epa.gov/radiation/wipp*) or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742. In accordance with the EPA's regulations at 40 CFR part 2 and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Ray Lee or Jonathan Walsh, Radiation Protection Division, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9463 or 202–343–9238; fax number: 202–343–2305; email address: *lee.raymond@epa.gov* or *walsh.jonathan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations:

Several acronyms and terms used to describe components of the WIPP disposal system and performance assessment computer models are included in this preamble. To ease the reading of this preamble and for reference purposes, the following terms are defined here:

BRAGFLO Computer model used to simulate brine and gas flow
CBFO Carlsbad Field Office
CCA Compliance Certification Application
CCDF Complementary Cumulative Distribution Function
CFR Code of Federal Regulations
DBR Direct Brine Release
DOE U.S. Department of Energy
DRZ Disturbed Rock Zone
EPA U.S. Environmental Protection Agency
FEPs Features, Events and Processes
LWA Land Withdrawal Act
MSHA Mine Safety and Health Administration
NMED New Mexico Environment Department
OPC Ordinary Portland Cement
PA Performance Assessment
PABC Performance Assessment Baseline Calculation
PAVT Performance Assessment Verification Test
PCS Panel Closure System
PCS–2012 Panel Closure System 2012 Performance Assessment
PCR Planned Change Request
PC3R Panel Closure Redesign and Repository Reconfiguration Performance Assessment
PMR Permit Modification Request
RCRA Resource Conservation and Recovery Act
ROM Run-of-Mine
ROMPC, or
ROMPCS6 Run-of-Mine Salt Panel Closure System
SMC Salado Mass Concrete
SNL Sandia National Laboratories
TRU Transuranic
TSD Technical Support Document
VOC Volatile Organic Compound
WIPP Waste Isolation Pilot Plant

Table of Contents

I. General Information
A. What should I consider as I prepare my comments for the EPA?
II. What is the WIPP?
III. What is the purpose of today's proposed action?
IV. How is the EPA responding to the DOE's planned change request?
A. What are the EPA's requirements for the panel closure design?
B. What changes are proposed to the panel closure design?
C. How has the EPA reached its decision?
V. How is the EPA revising Appendix A, Condition 1?
A. What are the current requirements of Appendix A, Condition 1?
B. What changes are proposed to Appendix A, Condition 1?
C. What did the EPA consider when making its decision?
VI. How has the EPA involved the public?
VII. Administrative Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 12898
F. National Technology Transfer & Advancement Act of 1995
G. Executive Order 13045: Children's Health Protection
H. Executive Order 13132: Federalism
I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
J. Executive Order 13211: Energy Effects

I. General Information

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

1. Submitting Confidential Business Information (CBI):

Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments:

When submitting comments, remember to—

- Identify the rulemaking by docket number, subject heading, **Federal Register** date and page number.
- Follow directions—the EPA may ask you to respond to specific questions or organize comments by referencing the chapter number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.
- Illustrate your concerns with specific examples and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What is the WIPP?

The WIPP is a disposal system for defense-related transuranic (TRU) radioactive waste. Developed by the DOE, the WIPP is located near Carlsbad in southeastern New Mexico. At the WIPP, radioactive waste is disposed of 2,150 feet underground in an ancient formation of salt which will eventually ''creep'' and encapsulate the waste. The WIPP has a total capacity of 6.2 million cubic feet of waste.

Congress authorized the development and construction of the WIPP in 1980 ''for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.'' [1] Waste which may be

[1] Department of Energy National Security and Military Applications of Nuclear Energy

Continued

emplaced in the WIPP is limited to TRU radioactive waste generated by defense activities associated with nuclear weapons; no high-level waste or spent nuclear fuel from commercial power plants may be disposed of at the WIPP. TRU waste is defined as materials containing alpha-emitting radioisotopes, with half lives greater than twenty years and atomic numbers above 92, in concentrations greater than 100 nano-curies per gram of waste.[2] Most TRU waste proposed for disposal at the WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons (or with the clean-up of weapons production facilities), e.g., rags, equipment, tools, protective gear, soil and organic or inorganic sludges. Some TRU waste is mixed with hazardous chemicals. The waste proposed for disposal at the WIPP is currently located at federal facilities across the United States, including locations in California, Idaho, Illinois, New Mexico, Nevada, Ohio, South Carolina, Tennessee and Washington.

The WIPP Land Withdrawal Act (LWA), initially passed by Congress in 1992 and amended in 1996, provides the EPA authority to oversee and regulate the WIPP. The WIPP LWA delegated to the EPA three main tasks, to be completed sequentially, for reaching an initial compliance certification decision. First, the Agency was required to finalize general regulations which apply to all sites—except Yucca Mountain—for the disposal of highly radioactive waste.[3] These disposal regulations, located at Subparts B and C of 40 CFR part 191, were originally published in the **Federal Register** in 1985 and amended in 1993.[4] Second, the EPA was to develop criteria, by rulemaking, to implement and interpret the general radioactive waste disposal regulations specifically for the WIPP. In 1996, the Agency issued the WIPP Compliance Criteria, which are found at 40 CFR part 194.[5] The EPA made changes to the Compliance Criteria via rulemaking in July 2004 (69 FR 42571–42583). These new provisions provide equivalent or improved oversight and better prioritization of technical issues in EPA inspections to evaluate waste characterization activities at DOE WIPP waste generator sites, and offer more direct public input into the Agency's decisions about what waste can be disposed of at the WIPP. Third, the EPA was to review the information submitted by the DOE and publish a certification decision.[6] The Agency issued its certification decision on May 18, 1998, as required by Section 8 of the WIPP LWA (63 FR 27354–27406) determining that the WIPP met the standards for radioactive waste disposal. The complete record and basis for the EPA's 1998 certification decision can be found in Air Docket A–93–02. Condition 1, concerning the panel closure system, was appended to 40 CFR part 194 as part of the certification decision.

Section 8(f) of the WIPP LWA requires that within five years of initial receipt of waste at the WIPP, and every five years thereafter, the DOE is to submit to the EPA and the State of New Mexico documentation of continued compliance with the part 191 radioactive waste disposal regulations. The Agency recertified the WIPP facility for the first time on March 29, 2006 (71 FR 18010–18021) and again on November 18, 2010 (75 FR 70584–70595).

The Department submitted the design of the WIPP repository in Chapter 3 of the 1996 Compliance Certification Application (CCA). The EPA's certification is based upon this design. The underground waste disposal region at WIPP is divided into panels. A panel is a group of rooms mined into the salt, connected by tunnels called drifts. When all of the rooms of a panel are filled with waste, the DOE intends to seal the drifts with engineered structures called panel closures. The EPA certified the WIPP based on a panel closure design that sealed the drift using a concrete block wall and a poured concrete monolith. The DOE proposes to change this design and close the drift using two steel bulkheads and mined salt. Both panel closure designs are discussed in detail in Section IV of this document.

III. What is the purpose of today's proposed action?

This action is being taken in response to the DOE's September 2011 Planned Change Request (PCR) to alter the design of the panel closures used at the WIPP. The WIPP underground waste disposal area is divided into ten groups of rooms, or panels. A waste panel is a group of mined rooms connected by drifts that provide both access and ventilation to the rooms. Following completion of waste disposal activities in each panel, the DOE intends to seal these drifts with engineered structures called panel closures. 40 CFR part 194, Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR part 191 Disposal Regulations, did not originally require panel closures for the purpose of long-term compliance with release limits for radionuclides. Panel closures have, however, always been included in the design of the repository, and therefore incorporated into modeling of the WIPP system as a feature of the repository.

Authorization Act of 1980, Public Law 96–164, section 213.

[2] WIPP Land Withdrawal Act, Pub. L. 102–579, section 2(18), as amended by the 1996 WIPP LWA Amendments, Pub. L. 104–201.

[3] WIPP LWA, section 8(b).

[4] 50 FR 38066–38089 (September 19, 1985) and 58 FR 66398–66416 (December 20, 1993).

[5] 61 FR 5224–5245 (February 9, 1996).

[6] WIPP LWA, section 8(d).

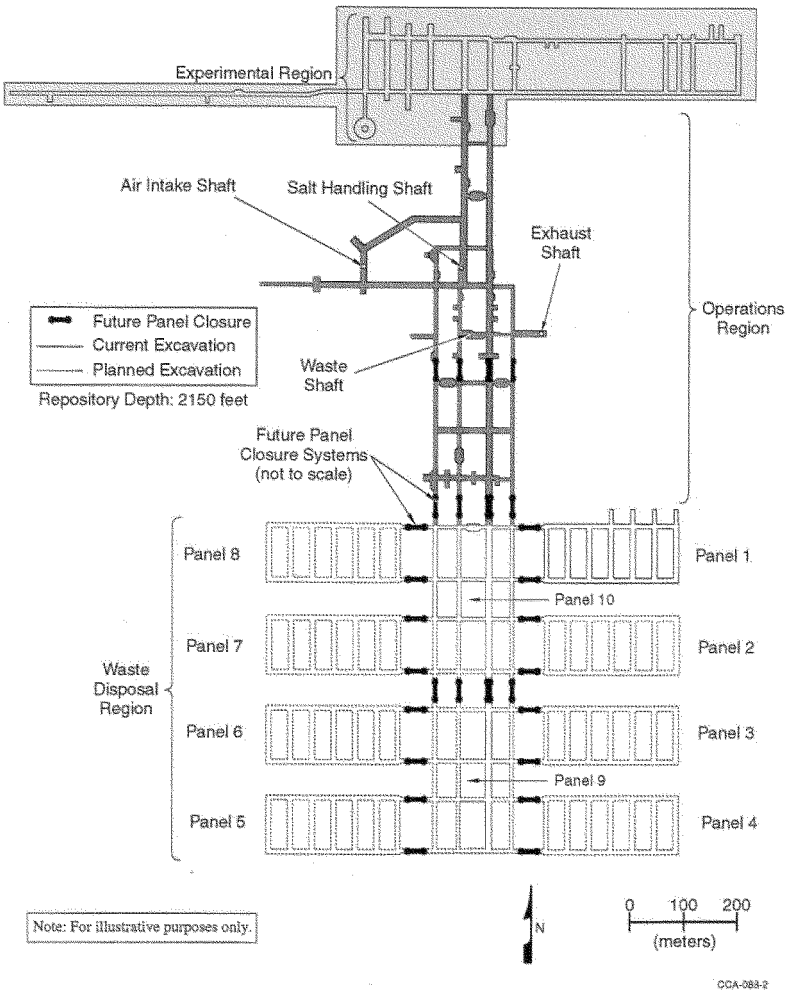

Figure 3-2. Plan View of WIPP Underground Facility and Panel Closure Systems

DOE/CAO 1996-2184 3-5 October 1996

Although the Agency determined that the DOE met all of the applicable requirements of the WIPP Compliance Criteria in its compliance certification decision (63 FR 27354–27406; May 18, 1998), the EPA amended the WIPP Compliance Criteria, 40 CFR part 194, and appended four explicit conditions to its certification of compliance to ensure that the measures actually implemented at the WIPP (and thus the circumstances expected to exist there) were consistent with the DOE's Compliance Certification Application (CCA) and with the basis for the EPA's compliance certification. Condition 1 of the certification applies to the panel closure system.[7] In the CCA, the Department presented four options for the design of the panel closure system, but did not specify which would be constructed at the WIPP facility. The Agency based its certification decision on the DOE's use of the most robust design, referred to in the CCA as ''Option D''.

At the time of the 1998 certification decision, there were indications that the DOE would seek to change the design of the panel closure system selected by the EPA. As stated in the original certification:

> Nothing in this condition precludes DOE from reassessing the engineering of the panel seals at any time. Should DOE determine at any time that improvements in materials or construction techniques warrant changes to the panel seal design, DOE must inform EPA. If EPA concurs, and determines that such changes constitute a significant departure from the design on which certification is based, the Agency is authorized under § 194.65 to initiate a rulemaking to appropriately modify the certification.'' (63 FR 27354, 27362; May 18, 1998.)

In 2002, the Agency approved the DOE's request to install only the explosion wall, and to extend the panel closure installation schedule until a new design is approved. In January 2007, the DOE requested that installation of the explosion walls also be delayed until a new design could be approved, and proposed to monitor gas generation in Panels 3 and 4 of the repository. The EPA approved this request in February 2007. Today's action represents the first time that the Agency has considered an alteration to the panel closure design itself.

The Department submitted a PCR to the EPA on September 28, 2011. Citing

[7] Conditions 2 and 3 of the final certification decision apply to activities conducted at waste generator sites that produce TRU waste proposed for disposal at WIPP (§§ 194.22 and 194.24), and Condition 4 of the certification applies to passive institutional controls (PICs), records and physical markers to warn future societies about the location and contents of the disposal system and thus to deter inadvertent intrusion into the WIPP (§ 194.43).

experience and data gained since the CCA, the DOE's PCR states that the Option D panel closure would be extremely difficult and costly to install, and that the highly engineered design is unnecessary for either worker safety or environmental protection during the operational period. The DOE instead proposed a new panel closure design, the Run-of-Mine Salt Panel Closure System (ROMPCS), which consists of mined salt emplaced between steel bulkheads.

The EPA has completed its technical review of the DOE's PCR and supporting documentation. The goal of the Agency's technical review process was to determine whether, with the new design, the WIPP adequately demonstrates compliance with the requirements of 40 CFR part 194 and the release limits of 40 CFR part 191 Subparts B and C. The process the EPA applied to support this proposed action entailed (1) a review of all materials submitted by the DOE, (2) requests for additional information including a full performance assessment, and (3) the independent performance of additional confirmatory calculations by the Agency. This process is fully documented in the EPA's TSD, ''Review of the DOE's Planned Change Request to Modify the WIPP Panel Closure System,'' (EPA–HQ–OAR–2013–0684–0002) and discussed in the following sections. Based on this process, the Agency concludes that the WIPP will remain in compliance with its release limits with the ROMPCS design. The Agency therefore proposes to approve the DOE's PCR to implement the redesigned panel closure at the WIPP, and to modify 40 CFR part 194 Appendix A, Condition 1 to allow a panel closure design other than Option D. Section IV, below, discusses the Agency's consideration of the proposed panel closure modification. Section V describes the Agency's approach to modifying Condition 1.

IV. How is the EPA responding to the DOE's planned change request?

A. What are the EPA's requirements for the panel closure design?

During the operational period of the repository, the panel closure system was intended to prevent access to closed waste panels, to mitigate the release of volatile organic compounds (VOCs) and to protect site workers from a hypothetical methane or hydrogen explosion inside a filled waste panel. These functions are addressed by the New Mexico Environment Department (NMED), and DOE has submitted a separate Resource Conservation and Recovery Act (RCRA) Permit Modification Request (PMR) stating that the new panel closure design will adequately protect workers and the public during the operational period of the WIPP.

The EPA's Compliance Criteria at 40 CFR part 194 originally did not require a panel closure of any kind to be installed in the repository for the purpose of long-term compliance with release limits for radionuclides. The purpose of 40 CFR part 194 is to demonstrate compliance with the disposal regulations at 40 CFR part 191 for containment of radionuclides. The containment requirements at 40 CFR 191.13 specify that releases of radionuclides to the accessible environment must be unlikely to exceed specific release limits for 10,000 years after disposal, based on the amount of waste in the repository at the time of closure (§ 194.31). Assessment of the likelihood that the WIPP will not exceed release limits is accomplished through a process called performance assessment, or PA. The WIPP PA process culminates in a series of computer simulations that model the physical attributes of the disposal system (e.g., site characteristics, waste forms and quantities, engineered features) in a manner that captures the behaviors and interactions among its various components. The computer simulations require the development of conceptual models that represent physical attributes of the repository based on features, events and processes (FEPs) that may impact the disposal system. The conceptual models are then expressed as mathematical relationships, which are solved with iterative numerical models, which are then translated into computer codes (§ 194.23). Numerous simulations are performed using sampled values for material properties and processes whose values are uncertain. The results of the simulations are intended to calculate possible releases of radioactive materials from the disposal system to the accessible environment over the 10,000-year regulatory period, and are used to demonstrate compliance with the containment requirements in 40 CFR 191.13. Because the radionuclide release limits are based on the amount of waste in the repository at the time of closure, the containment requirements are expressed in terms of ''normalized releases.'' The results of the PA are assembled into complementary cumulative distribution functions (CCDFs), which indicate the probability of exceeding various levels of normalized releases (§ 194.34).

At the time of the CCA, given limited information on how the different panel closure designs could influence performance, the Agency contended that the panel closures constructed in the repository should have physical properties similar to those that had been used to represent them in the compliant performance assessment. As stated in the WIPP certification:

> EPA based its certification decision on DOE's use of the most robust design (referred to in the CCA as ''Option D''). The Agency found the Option D design to be adequate, but also determined that the use of Salado mass concrete—using brine rather than fresh water—would produce concrete seal permeabilities in the repository more consistent with the values used in DOE's performance assessment. Therefore, Condition 1 of EPA's certification requires DOE to implement the Option D panel closure system at WIPP, with Salado mass concrete replacing fresh water concrete. (63 FR 27355)

Because the Agency based its certification of the WIPP's compliance with the disposal regulations on the accurate representation of the repository in performance assessment, Condition 1 was appended to 40 CFR Part 194 during the certification of the WIPP. No other design feature of the repository is required by the Compliance Criteria in a similarly explicit way.

B. What changes are proposed to the panel closure design?

The Option D panel closure design consists of a 12-foot thick ''explosion-isolation wall'' constructed of solid concrete blocks filling the drift on the waste disposal side, a short section of open drift called an ''isolation zone'' and a monolithic concrete barrier on the side of the open drift. Fractured rock in the immediate vicinity of the drift—called the disturbed rock zone, or DRZ—would be removed, and the resulting void space filled by the concrete monolith. In its current PCR, the DOE states that ''large scale testing has demonstrated that using SMC [Salado Mass Concrete] cannot meet the design and performance requirements for the panel closures as specified in the CCA.'' Even if the Option D monolith could be constructed as planned, the Agency acknowledges that it would be installed at significant cost to the Department, that additional occupational hazards would be incurred by moving and pouring large amounts of concrete in the underground and that disposal operations would be significantly disrupted.

The DOE's new panel closure design, the ROMPCS, consists primarily of run-of-mine (ROM) salt—impure halite that

has been mined in the course of normal repository operations and not subjected to additional processing or grading. The ROMPCS design consists of two standard steel ventilation bulkheads with a minimum of 100 feet of run-of-mine (ROM) salt between them, filling the drift from floor to ceiling. In Panels 1, 2 and 5, where explosion walls have already been constructed, salt will be placed directly against the explosion wall and a standard steel ventilation bulkhead placed on the outer end of the panel closure. The DOE has stated that the ROMPCS will provide adequate protection during the operational period. Upon initial emplacement, the run-of-mine salt will exhibit the properties of a loosely consolidated or unconsolidated material. Over time, as the open areas of the repository close due to salt creep, the panel closures will consolidate and eventually heal to a state resembling intact salt.

The EPA's technical review process is summarized below in Section C. Based on the results of performance assessment, the Agency concludes that the WIPP will continue to comply with the EPA's disposal standards with the ROMPCS. Therefore, the Agency proposes to approve the DOE's PCR and allow the implementation of the ROMPCS design at the WIPP.

C. How has the EPA reached its decision?

As in the past, the Agency's consideration of the panel closure system focused on its inclusion and accurate representation in repository performance assessment, so that the EPA can ultimately certify the WIPP's ability to meet long-term performance standards.

In support of its panel closure PCR, the DOE initially submitted a performance assessment calculation called the Panel Closure Redesign and Repository Reconfiguration (PC3R) PA, which incorporated multiple planned changes. The Agency determined that to approve the PCR, it was necessary to isolate the impacts, if any, of the change in panel closure design. In response, the DOE prepared the PCS–2012 PA, with the explicit goal of changing only those aspects of the current baseline PA that are directly related to the change in the panel closure design. Thus, results of the PCS–2012 PA may be directly compared to results of the current Performance Assessment Baseline Calculation (PABC–09) to see the impact of changes in the panel closure on modeled releases from the facility.

The majority of the technical effort expended by the Agency was spent determining how the changes in the panel closures should be represented in the performance assessment models. This review process involved interactions with the DOE and DOE contractor staff and is documented in the Agency's TSD, ''Review of DOE's Planned Change Request to Modify the WIPP Panel Closure System.'' (EPA–HQ–OAR–2013–0684–0002) The process began by identifying the universe of changes which might have taken place within the performance assessment. The conclusion of the features, events and processes (FEPs) review found that the required changes to the models were limited to the properties of the panel closure and of the disturbed rock zone immediately surrounding it. In performance assessment, these materials are represented in the BRAGFLO computer model, which simulates the flow of brine and gas in the repository over the 10,000-year period of performance. Some modeling changes, such as differences between the physical dimensions of the panel closure designs, were relatively simple for the DOE to implement. The most significant change between panel closure designs, and the greatest modeling challenge, was the dynamic nature of the ROMPCS's material properties. The Option D design called for the excavation of the DRZ, and the installation of a rigid concrete monolith which would effectively prevent further fracturing. Thus, the properties of the panel closure and surrounding DRZ were not expected to change significantly over time, and were represented in PA by constant values. The ROMPCS will be emplaced in a loose form, surrounded by a fractured DRZ. As the panel closure system consolidates due to repository creep closure, it will decrease in porosity, and its permeability to fluids will decrease. Based on measurements taken in the underground, laboratory data and geomechanical modeling, it is expected that this consolidation process will be complete approximately 200 years after the closure of the repository.

The DOE represents the ROMPCS using three time periods. Two time periods of one hundred years each are used to represent the gradual reconsolidation of the panel closure system. A third time period, extending from 200 years after closure to the end of the 10,000-year performance period, represents the final healed state of the PCS. The consolidation of the ROMPC is modeled by sampling its porosity from a range of possible values for each time period. The permeability of the panel closure to fluids during each time period is then calculated using a correlation between the porosity and permeability of salt, developed by the DOE using existing experimental data. The DRZ surrounding the panel closure is modeled so that it is more permeable to fluids during the first 200 years after closure, and less permeable when the system has reached a steady state. Parameter values representing other material properties of the ROM salt were directly adopted from parameters that were developed during the CCA to describe the crushed salt component of the shaft seals. The parameters used to represent the changes in performance assessment were finalized by the DOE in a memorandum dated May 3, 2012.

After the EPA's concurrence with the representation of the panel closure, the DOE executed the PCS–2012 PA calculation. Results of the PCS–2012 PA are discussed in detail in TSD Section 4.5. Compared to the PABC–2009 baseline, calculated mean total releases from the PCS–2012 PA did not appreciably increase at a probability of 0.1, and increased at a probability of 0.001, from 1.1 to 1.51 EPA units. (See TSD, EPA–HQ–OAR–2013–0684–0002, Table 3.7.) Thus, the mean total release, as well as the 90th percentile and upper 95% confidence limit of the mean, fell significantly below the Agency's regulatory limits of 1 EPA unit for a probability of 0.1, and 10 EPA units for a probability of 0.001.

Modeled releases from the repository principally result from the penetration of the repository waste by a hypothetical oil or gas borehole. Specific release mechanisms include cuttings and cavings releases, direct brine releases (DBRs), spallings releases and releases up a borehole to the Culebra dolomite. The increase in calculated releases in the PCS–2012 PA is primarily due to increases in direct brine releases, resulting from changes in pressure and brine saturation in the waste panels (See TSD, EPA–HQ–OAR–2013–0684–0002, Section 3.5). Compared to the Option D PCS design, the ROMPCS is expected to be more permeable to fluids upon installation, and less permeable after it has consolidated. The initial conditions of the WIPP model make a significant amount of brine available in the repository at the time of closure. The higher initial permeability of the ROMPCS allows early-time brine inflows into the waste panels, resulting in generally higher brine saturations and higher rates of gas generation in the modeled waste panel. When the permeability of the panel closures decreases after 200 years, both brine and gas can be retained in the panel, increasing the brine saturations and gas pressures encountered by borehole

penetrations of the repository. Those increases in turn result in increases in mean DBR and spallings releases. Cuttings and cavings are important contributors to total releases, but are not affected by waste panel pressure and brine saturation. Releases through the Culebra are essentially unchanged from those calculated using the Option D design.

The EPA considers this analysis important to its understanding of the disposal system. The Agency concludes that the changes to the panel closure system do not have a significant impact on the long-term performance of the disposal system.

V. How is the EPA revising Appendix A, Condition 1?

A. What are the current requirements of Appendix A, Condition 1?

The Option D panel closure is currently required by 40 CFR part 194, Appendix A, Condition 1.

As described in Section III, the EPA certified the WIPP's performance based on the properties of the Option D panel closure. It is the only engineered aspect of the repository design that is explicitly required by rule.

B. What changes are proposed for Appendix A, Condition 1?

As described above in Section IV, the EPA is proposing to accept a redesigned panel closure. Acceptance of the PCR requires modification of Condition 1. The Agency does not believe that the design must be specified by the condition, because there is no evidence to suggest that the panel closure has a disproportionate ability to impact long-term performance when compared to other design features of the repository. This change does not grant the DOE the ability to alter the panel closure design at will. As with any engineered component of the disposal system, a departure from the current, approved design must be submitted to the Agency as a planned change request as required by § 194.4(b)(3)(i). The EPA would expect any such request to be supported by complete technical documentation, including information concerning ''the geology, hydrology, hydrogeology, and geochemistry of the WIPP disposal system'' and ''WIPP materials of construction, standards applied to design and construction,'' as required by § 194.14, Content of certification applications. The Agency would use this information to determine whether or not the WIPP remains in compliance with the disposal standards. As with any other planned change, based on the potential impact to the WIPP's compliance, the EPA will determine whether the change ''departs significantly from the most recent compliance application,'' and must be addressed by rule in accordance with § 194.65.

C. What did the EPA consider when making its decision?

In 1998, the EPA certified the WIPP conditionally based on the Option D panel closure design. At that time, the DOE had not specified which design it planned to implement, and limited performance assessment results were available to indicate the impact of the panel closure design on repository performance. In contrast, the Department has now proposed a single panel closure design to be installed in all waste panels. Due to the evolution of the WIPP PA since the CCA, the DOE and the EPA have gained a greater understanding of panel closures' influence on PA results.

The Agency initially chose the Option D panel closure partly to match the physical properties of the panel closure to the modeled parameters of the generic panel closure represented in the CCA. This representation of the panel closure was refined in the 2002 Technical Baseline Migration PA to reflect the dimensions of the Option D design and include impacts of a rigid structure on the surrounding DRZ. These changes did not result in a significant impact on predicted releases, and were included in PAs which supported both WIPP recertifications. The changes made in the PCS–2012 PA altered the panel closure properties substantially, without significantly affecting the WIPP's ability to comply with the release limits. The DOE's sensitivity analysis indicates that several sampled parameters related to the panel closures contributed to the overall results, but their contributions were dwarfed by the effect of other parameters, such as the waste shear strength and actinide solubility. Additionally, the Agency carried out confirmatory studies as part of its technical review which analyzed how different representations of the DRZ surrounding the panel closure could potentially influence modeled results.

The conclusion that the Agency draws from all of these studies is that although the panel closures can influence modeled results to a degree, there is no evidence that modifications to the panel closure or its representation in PA could jeopardize the WIPP's ability to comply with the disposal requirements. Because panel closures do not exercise a disproportionate impact on the WIPP's ability to isolate radionuclides from the accessible environment, the EPA does not believe that it is necessary for the specific design of the panel closure to remain as a condition of certification. Rather, panel closures can be treated in a similar manner as any other engineered feature of the repository. As described in Section IV, the DOE must still submit a PCR if it wishes to alter the design from the approved ROMPCS.

VI. How has the EPA involved the public?

In order to guide its technical process, the EPA held informal public meetings in Carlsbad, New Mexico, on December 5, 2012, and Santa Fe, New Mexico, on December 6, 2012. The purpose of these meetings was to provide the public with background on the DOE's panel closure system planned change request, and to give the public the opportunity to raise any technical issues that the Agency should consider in its decision. At both meetings, many comments were in favor of approving the panel closure planned change request based on its scientific and economic merits. Specifically, commenters expressed confidence in the ability of salt creep to compress the ROMPCS and form an adequate panel closure, and emphasized the greater operational safety when installing the revised design. In Santa Fe, one commenter expressed the view that the lack of a cost analysis for building the Option D panel closures, and the failure to explicitly consider other designs are deficiencies in the PCR. Other commenters asked questions regarding the likelihood of gas generation and explosions in the closed panels. No technical comments were submitted.

Additional public meetings will be held in Carlsbad and Albuquerque in December 2013. Details and summaries of these meetings will be published on the EPA's WIPP Web site at *http://www.epa.gov/radiation/wipp*.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create

a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action.''

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') generally requires any federal agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless they certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because it sets forth requirements which apply only to federal agencies. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paper Reduction Act, 44 U.S.C. 3501 *et seq.* The Compliance Criteria in 40 CFR part 194 requirements are applicable only to the DOE and the EPA and do not establish any form of collection of information from the public.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Pursuant to Title II of the UMRA, we have determined that this regulatory action is not subject to the requirements of sections 202 and 205, because this action does not contain any ''federal mandates'' for state, local or tribal governments or for the private sector. This rule applies only to federal agencies.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629; February 16, 1994), entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income, minority and Native-American communities. We have complied with this mandate. However, the requirements specifically set forth by the Congress in the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579), which prescribes the EPA's role at the WIPP, did not provide authority for the Agency to examine impacts in the communities in which wastes are produced, stored and transported, and Congress did not delegate to the EPA the authority to consider the issue of alternative locations for the WIPP. During the development of the existing provisions in 40 CFR part 194, the EPA involved minority and low income populations early in the rulemaking process. In 1993, the EPA representatives met with New Mexico residents and government officials to identify the key issues that concern them, the types of information they wanted from the Agency and the best ways to communicate with different sectors of the New Mexico public. The feedback provided by this group of citizens formed the basis for the EPA's WIPP communications and consultation plan. To help citizens (including a significant Hispanic population in Carlsbad and the nearby Mescalero Indian Reservation) stay abreast of the EPA's WIPP-related activities, the Agency developed many informational products and services. The EPA translated several documents regarding WIPP into Spanish, including educational materials and fact sheets describing the EPA's WIPP oversight role and the radioactive waste disposal standards. The Agency established a toll-free WIPP Information Line, recorded in both English and Spanish, providing the latest information on upcoming public meetings, publications and other WIPP-related activities. The EPA also developed a mailing list, which includes many low-income, minority and Native-American groups, to systematically provide interested parties with copies of EPA's public information documents and other materials. Even after the final rule, in 1998, the EPA has continued to implement outreach services to all WIPP communities based on the needs determined during the certification. The Agency has established a WIPP–NEWS email listserv to facilitate communications with interested stakeholders not only in New Mexico and surrounding areas, but nationally and internationally as well. The EPA's WIPP Web site is also continuously updated with relevant news and updates on current and future WIPP activities.

F. National Technology Transfer & Advancement Act of 1995

Section 12 of the National Technology Transfer & Advancement Act of 1995 is intended to avoid ''re-inventing the wheel.'' It aims to reduce costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry. To comply with the Act, the EPA must consider and use ''voluntary consensus standards,'' if available and applicable, when implementing policies and programs, unless doing so would be ''inconsistent with applicable law or otherwise impractical.'' We have determined that this regulatory action is not subject to the requirements of National Technology Transfer & Advancement Act of 1995 as this rulemaking is not setting any technical standards.

G. Executive Order 13045: Children's Health Protection

This rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885; April 23, 1997) because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255; August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed

action revises a specific condition of the Compliance Criteria in 40 CFR part 194. These criteria are applicable only to the DOE (operator) and the EPA (regulator) of the WIPP disposal facility. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with the Agency's policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249; November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed action revises a condition of the Compliance Criteria in 40 CFR part 194. The Compliance Criteria are applicable only to Federal agencies. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with the EPA policy to promote consultation and coordination with Indian Tribal Governments, the Agency specifically solicits comment on this proposed rule from Tribal officials.

J. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Dated: November 18, 2013.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons set out in the preamble, 40 CFR part 194 is proposed to be amended as follows:

PART 194—CRITERIA FOR THE CERTIFICATION AND RECERTIFICATION OF THE WASTE ISOLATION PILOT PLANT'S COMPLIANCE WITH THE 40 CFR PART 191 DISPOSAL REGULATIONS

■ 1. The authority citation for part 194 continues to read as follows:

Authority: Pub. L. 102–579, 106 Stat. 4777, as amended by Public Law 104–201, 110 Stat. 2422; Reorganization Plan No. 3 of 1970, 35 FR 15623, Oct. 6, 1970, 5 U.S.C. app. 1; Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011–2296 and 10101–10270.

■ 2. Amend Appendix A to Part 194 by revising Condition 1: § 194.14(b) to read as follows:

Appendix A to Part 194—Certification of the Waste Isolation Pilot Plant's Compliance With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria

* * * * *

Condition 1: § 194.14(b), Disposal system design, panel closure system. The Department shall close filled waste panels in a manner that has been specifically approved by the Agency. Any modification to the approved panel closure design must be submitted by the DOE as a planned change request pursuant to § 194.4(b)(3)(i), and include supporting information required by § 194.14, *Content of compliance certification application.* The Administrator or Administrator's authorized representative will determine whether the planned change differs significantly from the design included in the most recent compliance certification, and whether the planned change would require modification of the compliance criteria. The EPA's approval of a panel closure change request requires that performance assessment calculations adequately represent the waste panel closure design, and that those calculations demonstrate the WIPP's compliance with the release standards set by 40 CFR part 191, Subpart B in accordance with § 194.34, *Results of performance assessments.*

* * * * *

[FR Doc. 2013–28240 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44, 46, and 52

[FAR Case 2012–032; Docket No. 2012–0032; Sequence No. 1]

RIN 9000–AM65

Federal Acquisition Regulation; Higher-Level Contract Quality Requirements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify when to use higher-level quality standards in solicitations and contracts, and to update the examples of higher-level quality standards by revising obsolete standards and adding two new industry standards that pertain to quality assurance for avoidance of counterfeit items. These standards will be used to help minimize and mitigate counterfeit items or suspect counterfeit items in Government contracting.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before February 3, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–032 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–032.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–032.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–032'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAR Case 2012–032, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, at 202–501–0136, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–032.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to revise FAR subpart 46.2, Contract Quality Requirements, to ensure that agencies assess the risk of nonconforming items when determining whether higher-level quality standards should be used by the Government and relied on by contractors. These quality standards must be designated in the solicitation and resultant contract. The contractor must also ensure its

subcontractors adhere to the quality standards, where appropriate. This case proposes to add this to the list of issues to be considered during contractor purchasing system reviews, referenced in FAR 44.303, to ensure that higher-level quality standards are implemented appropriately by the prime contractor.

Section 818, entitled ''Detection and Avoidance of Counterfeit Electronic Parts,'' of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81, enacted December 31, 2011) requires DoD to issue regulations addressing contractor responsibilities for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts. However, because of the globalization of the marketplace, the problem of counterfeits extends far beyond DoD and electronic parts, posing a supply chain challenge to both Government and industry. Globalization in the marketplace increased the risk of counterfeit items in the government's and industry's supply chain. Globalization raises the risk because of the variations in laws related to commerce and fragments the quality assurance process.

While this rule does not directly implement any specific aspect of section 818, it recognizes the quality, reliability, and safety risk that counterfeit items represent, and adds two examples of higher-level quality standards that respond to the need for quality controls in acquisitions for complex or critical items.

This proposed rule is one of three FAR system proposed rules addressing various aspects of detection and avoidance of counterfeit parts as required by section 818:

1. Defense Federal Acquisition Regulation Supplement Case 2012–D055, entitled ''Detection and Avoidance of Counterfeit Electronic Parts,'' which was published for public comment in the **Federal Register** at 78 FR 28780 on May 16, 2013.

2. FAR Case 2013–002, entitled ''Expanded Reporting of Nonconforming Supplies,'' is being drafted to require expanded reporting of nonconforming items in partial implementation of section 818 of the NDAA for FY 2012.

II. Discussion and Analysis

The rule proposes to make the following changes:

- FAR 44.303, Contractors' Purchasing Systems Review, would be revised to add implementation of higher-level quality standards to the areas for evaluation when conducting a contractor's purchasing system review.
- Types of contract quality requirements FAR subsections will change as follows:
  - FAR 46.202–4(a) would be revised to require agencies to establish procedures for determining when higher-level quality standards are appropriate, for determining the risk (both the likelihood and the impact) of receiving nonconforming items, and for advising the contracting officer which higher-level quality standards should be applied on the contract.
- FAR 46.202–4(a)(1) would be revised to add ''design'' and ''testing'' to the list of examples of technical requirements requiring control.
  - FAR 46.202–4(b) would be revised to remove outdated or obsolete standards and add new examples of higher-level quality standards, including those related to counterfeit electronic parts and materials. This list of standards was reviewed and revised based on subject matter experts in quality assurance from across the Government.
- FAR 46.311, Higher-level Contract Quality Requirement, would be revised to clarify that, if the clause is used, the contracting officer shall list one or more higher-level quality standard.
- The clause at FAR 52.246–11, Higher-Level Contract Quality Requirement, would be revised to remove the opportunity for the offeror to select a standard.

III. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it does not apply to acquisitions for goods or services that are not designated critical by the agency and does not add new reporting requirements.

The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This case was opened to enable the Government to select appropriate quality standards based on the criticality of the requirement and the risk nonconforming items pose to the accomplishment of an agency's mission in a given acquisition. Based on this analysis, the Government will identify the appropriate quality standards for the procurement. The contractor must ensure that its deliverables meet all the specified quality standards, which also entails ensuring that its subcontractors adhere to the higher level quality standard where appropriate. This case proposes to (a) have the contracting officer specify the higher-level quality requirement(s), as opposed to the contractor selecting a standard from a list and (b) add the implementation of higher-level quality standards to the list of items to be considered during contractor purchasing system reviews. No instances were found in practice where this clause was being used to allow offerors an opportunity to opt-out of a quality standard; therefore, this change is being made, in part, to be consistent with common practice.

We estimate that small businesses that provide critical items directly to the Government or to Government prime contractors may be impacted by this rule, however, there are no statistics or databases that would identify the number of contracts that contain higher-level quality standards and how many of those contracts are awarded to small businesses.

There are no reporting, recordkeeping, or other compliance requirements associated with this proposed rule. Any such requirements for a contractor purchasing system review have already been addressed in FAR subpart 44.3. The proposed rule will not create new purchasing system review requirements beyond those that already exist. The rule does not duplicate, overlap, or conflict with any other Federal rules. The compliance and reporting requirements associated with the proposed rule have been minimized. DoD, GSA, and NASA have been unable to identify any alternatives that meet the objectives of this rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested

parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2012–032) in correspondence.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 44, 46, and 52

Government procurement.

Dated: November 26, 2013.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 44, 46, and 52 as set forth below:

■ 1. The authority citation for 48 CFR part 44 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 2. Amend section 44.303 by—

■ a. Removing from the end of paragraph (i) ''and'';

■ b. Removing from the end of paragraph (j) the period and adding ''; and'' in its place; and

■ c. Adding paragraph (k).

The added text reads as follows:

44.303 Extent of review.

* * * * *

(k) Implementation of higher-level quality standards.

PART 46—QUALITY ASSURANCE

■ 3. The authority citation for 48 CFR part 46 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 4. Revise section 46.202–4 to read as follows:

46.202–4 Higher-level contract quality requirements.

(a) Agencies shall establish procedures for determining when higher-level contract quality requirements are necessary, for determining the risk (both the likelihood and the impact) of receiving nonconforming items, and for advising the contracting officer about which higher-level standards should be applied and included in the solicitation and contract. Requiring compliance with higher-level quality standards is appropriate in solicitations and contracts for complex or critical items (see 46.203(b) and (c)) or when the technical requirements of the contract require—

(1) Control of such things as design, work operations, in-process controls, testing, and inspection; or

(2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) When the contracting officer, in consultation with technical personnel and in accordance with agency procedures, finds it is in the Government's interest to require higher-level quality standards be implemented, the contracting officer shall use the clause prescribed at 46.311 to list the applicable standard(s). Examples of higher-level quality standards include, but are not limited to, ISO 9001, ASQ E, ASME NQA–1, SAE AS9100, SAE AS9003, SAE AS5553, and SAE AS6174.

■ 5. Revise section 46.311 to read as follows:

46.311 Higher-level contract quality requirement.

The contracting officer shall insert the clause at 52.246–11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate and one or more such standards will be included in the clause (see 46.202–4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 7. Revise section 52.246–11 to read as follows:

52.246–11 Higher-Level Contract Quality Requirement.

As prescribed in 46.311, insert the following clause: Higher-Level Contract Quality Requirement (Date)

The Contractor shall comply with the higher-level quality standard(s) listed below.

[*Contracting Officer insert the title, number, date, and tailoring (if any) of the higher-level quality standards.*]

(End of clause)

[FR Doc. 2013–28930 Filed 12–2–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2013–0107;450 003 0115]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 11 Tarantula Species in the Genus Poecilotheria as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 11 tarantula species in the genus *Poecilotheria* as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific and commercial information indicating that listing these species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if listing these 11 species is warranted. To ensure that this status review is comprehensive, we request scientific and commercial data and other information regarding these species. At the conclusion of this review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before February 3, 2014. After this date, you must submit information directly to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below. Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–HQ–ES–2013–0107, which is the docket number for this action. Then click on the Search button. You may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most

compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple pieces of information, our preferred format is a spreadsheet in Microsoft Excel.

• *By hard copy:* U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–HQ–ES–2013–0107, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept information by email or fax. We will post all information on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

For the status review to be complete and based on the best available scientific and commercial information, we request information on 11 *Poecilotheria* species (see list in Table 1, below) from government agencies (including foreign national and provincial governments within the range of each of these species), the scientific community, industry, and any other interested parties. We seek information on:

(1) Each species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected population trends;

(e) Potential threats to each species, such as harvest, domestic and foreign trade, habitat destruction, intentional killing, or other threats not identified; and

(f) Past and ongoing conservation measures for each species or its habitat.

(2) The factors that are the basis for making a listing determination for a species or subspecies under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of their habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting each species' continued existence.

(3) The potential effects of climate change on each species and its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding will be available to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Evaluation of Information for a 90-Day Finding on a Petition

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to each species, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented in Appendix A. in Docket No. FWS–HQ–ES–2013–0107 on *http://www.regulations.gov.*

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Petition History

We received a petition, dated October 29, 2010, from WildEarth Guardians requesting that the following 11 eastern hemisphere ''tarantuala'' species in the genus *Poecilotheria* be listed under the Act as endangered or threatened: *Poecilotheria fasciata; P. formosa; P. hanumavilasumica; P. metallica; P. miranda; P. ornata; P. pederseni; P. rufilata; P. smithi; P. striata;* and *P. subfusca* (see Table 1 for common

names associated with each of these species). The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). This finding addresses the petition.

Evaluation of Petition

The 11 species named in the petition include six species native to India and five native to Sri Lanka (Table 1). All 11 species named in the petition have multiple common names (Table 1) and are therefore referred to by their scientific names throughout this finding.

TABLE 1—LIST OF SPECIES IN THIS 90-DAY FINDING

Species	Common name(s)	Current range
Poecilotheria fasciata	banded parachute spider, Sri Lankan ornamental tarantula, lemon-legged tiger spider, Thada kaha iri padethi divimakuluwa.	Sri Lanka.
Poecilotheria formosa	beautiful parachute spider, finely formed parachute spider, Salem ornamental tarantula.	India.
Poecilotheria hanumavilasumica	Rameshwaram parachute spider, Rameshwaram ornamental	India.
Poecilotheria metallica	peacock parachute spider, Gooty ornamental tarantula, Gooty tarantula, metallic tarantula, peacock tarantula, Salepurgu.	India.
Poecilotheria miranda	wonderful parachute spider, red parachute spider	India.
Poecilotheria ornata	ornate parachute spider, fringed ornamental tarantula, yellow-legged tiger spider, Kaha iri padethi divimakuluwa.	Sri Lanka.
Poecilotheria pederseni	Hambantota parachute spider, Pederseni's tiger spider, Pederseni divimakuluwa.	Sri Lanka.
Poecilotheria rufilata	reddish parachute spider, rufus parachute spider, redslate ornamental tarantula.	India.
Poecilotheria smithi	Kandy parachute spider, Smith's tiger spider, Sithge divimakuluwa	Sri Lanka.
Poecilotheria striata	striped parachute spider, striated parachute spider, Mysore ornamental tarantula.	India.
Poecilotheria subfusca	brown parachute spider, ivory ornamental tarantula, ivory bird-eating tarantula, Eth dala peha iri padethi divimakuluwa.	Sri Lanka.

Poecilotheria is a genus of very large, ornate spiders that occur in northeastern and southern India and central and southern Sri Lanka (Petition, p. 1). *Poecilotheria* species are arboreal and occur in mesic and xeric montane forests where they are generally found under the bark or in natural cavities of trees. Of the 11 species named in the petition, *P. fasciata* occurs in xeric forests. The remaining 10 species occur in mesic forests (Petition, p. 8). *Poecilotheria* species appear to differ in their tolerance of altered habitat (Petition, p. 9). The primary factors indicated in the petition as causing these species to face extinction or endangerment include destruction of forest habitat, collection for the pet trade, intentional killing, inadequate regulatory mechanisms, range restrictions and rarity, and cumulative threats.

Information provided in the petition and in the references cited in the petition regarding current ranges and population trends is summarized below.

Indian Species

P. formosa: This species is reported from three sites in two areas of the southern Eastern Ghats in southern India. Population information is not available. Based on the ecology and behavior of other closely related *Poecilotheria* species, and current threats, the population is assumed to be decreasing. The species is categorized on the International Union for the Conservation of Nature (IUCN) Red List as Endangered (Molur *et al.* 2008b).

P. hanumavilasumica: This species is endemic to the Ramanthapuram district, southern India, where it is restricted to a few plantations. The species has been recorded from eight subpopulations that vary in size from 4 to 78 individuals. The species' population is reported to be decreasing. It is categorized on the IUCN Red List as Critically Endangered (Siliwal *et al.* 2008a).

P. metallica: This species is known from a single location in Andhra Pradesh, India. It is described as likely being very rare. Population information is not available, but the population is assumed to be decreasing. The species is categorized on the IUCN Red List as Critically Endangered (Molur *et al.* 2008a).

P. miranda: The species is recorded from only a few locations in the Chhota Nagpur region of northeast India. Population information is not available, but the species is described as rare. The population is assumed to be decreasing. The species is categorized on the IUCN Red List as Endangered (Siliwal *et al.* 2008b; IUCN 2001, pp. 18–20).

P. rufilata: The species is endemic to the southern Western Ghats, in southern India. The species is reported from six isolated locations. Population information is not available, but the species is assumed to be decreasing. It is categorized on the IUCN Red List as Endangered (Siliwal *et al.* 2008c; IUCN 2001, pp. 18–20).

P. striata: The species is found in the Western Ghats just north and south of the Palghat gap, in southern India. It has been reported from fewer than 10 isolated locations, with spider abundance varying depending on the habitat. Population information is not available. The species is categorized on the IUCN Red List as Vulnerable (Siliwal *et al.* 2008d; IUCN 2001, pp. 21–22).

Sri Lankan Species

P. fasciata: Historically the species is known from eight locations in central Sri Lanka (Petition, p. 6, citing several sources). In a 2003–2005 survey of Sri Lankan *Poecilotheria,* three individuals of this species were recorded in central Sri Lanka. One individual was recorded in Kurunagala, and one individual was recorded at each of two different sites in Naula (Samarawckrama *et al.* 2005, pp. 76, 83).

P. ornata: Historically the species is known from five locations in southern Sri Lanka (Petition, p. 7, citing several sources). In a 2003–2005 survey of Sri Lankan *Poecilotheria,* six individuals of this species were recorded in central and southern Sri Lanka. One individual was recorded in Kitulgala Forest Reserve (in Central Province), two individuals were recorded in Udamaliboda, Deraniyagala (in Sabaragamuwa Province), and three

individuals were recorded in Sinharaja World Heritage Site (in Southern Province) (Samarawckrama *et al.* 2005, pp. 76, 83). IUCN Sri Lanka (2007, p. 131) categorizes this species as ''near threatened,'' that is, it is very close to qualifying for or is likely to qualify for a threatened category in the near future.

P. pederseni: Historically the species is known only from its type locality in Hambantota District (in Southern Province) (Petition, p. 7, citing several sources). In a 2003–2005 survey of Sri Lankan *Poecilotheria,* six individuals of this species were recorded in Hambantota. Three were recorded from Bundala National Park, and three from Madunagala Sanctuary (Samarawckrama *et al.* 2005, pp. 76, 83).

P. smithi: The species is known only from two locations in south central Sri Lanka—Haragama and Kandy (Petition, p. 7, citing several sources). In a 2003–2005 survey of Sri Lankan *Poecilotheria,* no *P. smithi* were recorded (Samarawckrama *et al.* 2005, pp. 76, 83). IUCN Sri Lanka (2007, p. 48) categorizes this species as vulnerable.

P. subfusca: Historically the species is known from seven locations in south-central Sri Lanka (Petition, p. 7, citing several sources). In a 2003–2005 survey of Sri Lankan *Poecilotheria,* 20 individuals of this species were recorded in central Sri Lanka: One each from Dotulugala reserve and Gannoruwa Village, Kandy (in Central Province); and 18 in Gannoruwa forest, though 15 of the 18 were juveniles. IUCN Sri Lanka (2007, p. 131) categorizes this species as ''near threatened,'' that is, it is very close to qualifying for or is likely to qualify for a threatened category in the near future.

In results of a survey of the genus in Sri Lanka, Samarawckrama *et al.* (2005, p. 76) indicate that they consider the five Sri Lankan *Poecilotheria* species to be endangered.

Finding

On the basis of our review under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing these 11 *Poecilotheria* species as endangered or threatened may be warranted. This finding is based on information provided in the petition regarding the five factors: The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A); overutilization for commercial, recreational, scientific, or educational purposes (Factor B); disease and predation (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and other natural or manmade factors affecting the species' continued existence (Factor E).

Based on information provided in the petition, in the sources cited in the petition, and readily available in our files, we find that the petition presents substantial information indicating that the petitioned action may be warranted for all 11 petitioned species as a result of habitat destruction or degradation through impacts associated with human activities (Factor A), collection for the pet trade (Factor B), small populations or limited and fragmented range (Factor E), and the cumulative impacts of threats (Factors E). Further, we find that the petitioned action may be warranted for *P. formosa, P. hanumavilasumica, P. rufilata,* and *P. striata* as a result of the threat of intentional killing (Factor E), and for *P. fasciata, P. ornata, P. pederseni, P. smithi,* and *P. subfusca* as a result of the inadequacy of existing regulatory mechanisms (Factor D).

Because we have found that the petition presents substantial information indicating that listing these 11 *Poecilotheria* species may be warranted, we are initiating a status review to determine whether listing these 11 species under the Act as endangered or threatened species is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a 90-day finding that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (''substantial 90-day finding''). Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of all references cited in this 90-day finding is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2013–0107 or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this finding is staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 13, 2013.

Steve Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–28553 Filed 12–2–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 78, No. 232

Tuesday, December 3, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0033]

Notice of Request for Renewal of a Currently Approved Information Collection (Pathogen Reduction/HACCP)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a renewal of an approved information collection regarding pathogen reduction and Hazard Analysis and Critical Control Point (HACCP) Systems requirements because OMB approval will expire on February 28, 2014.

DATES: Comments on this notice must be received on or before February 3, 2014.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Room Manager, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163B, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2013–0024. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6077, South Building, Washington, DC 20250; Telephone: (202) 690–6510.

SUPPLEMENTARY INFORMATION:

Title: Pathogen Reduction/HACCP Systems.

OMB Number: 0583–0103.

Expiration Date of Approval: 2/28/2014.

Type of Request: Renewal of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is requesting a renewal of an approved information collection addressing paperwork and recordkeeping requirements regarding Pathogen Reduction and HACCP Systems because OMB approval will expire on February 28, 2014.

FSIS has established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a framework for modernization of the meat and poultry inspection systems. The regulations (1) require that each establishment develop, implement, and revise, as needed, written Sanitation Standard Operating Procedures (Sanitation SOPs) (9 CFR Part 416); (2) require regular microbial testing for generic *E. coli* by slaughter establishments to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria (9 CFR 310.25(a) and 381.94(a)); and (3) require that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP (9 CFR Part 417).

Establishments may have programs that are prerequisite to HACCP that are designed to provide the basic environmental and operating conditions necessary for the production of safe, wholesome food. Because of its prerequisite programs an establishment may decide that a food safety hazard is not reasonably likely to occur in its operations. The establishment would need to document this determination in its Hazard Analysis and include the procedures it employs to ensure that the program is working, and that the hazard is not likely to occur (9 CFR 417.5 (a)(1)).

FSIS has made the estimates below based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take respondents an average of 858 hours per annum to comply with the Pathogen Reduction and HACCP Systems information collection.

Respondents: Meat and poultry establishments.

Estimated No. of Respondents: 7,298.

Estimated No. of Annual Responses per Respondent: 7,139.

Estimated Total Annual Burden on Respondents: 6,263,327 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence, SW., Room 6077, South Building, Washington, DC 20250, (202)690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service*.

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on November 26, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–28842 Filed 12–2–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0032]

Notice of Request for Revision of a Currently Approved Information Collection (Procedures for the Notification of New Technology)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a revision of a currently approved information collection regarding the procedures for notifying the Agency about new technology because the OMB approval will expire on January 31, 2014, and because FSIS has revised its total annual burden estimate in light of the latest available data.

DATES: Comments on this notice must be received on or before February 3, 2014.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2013–0024. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6077, South Building, Washington, DC 20250; Telephone: (202) 690–6510.

SUPPLEMENTARY INFORMATION:

Title: Procedures for the Notification of New Technology.

OMB Number: 0583–0127.

Expiration Date of Approval: 1/31/2014.

Type of Request: Renewal of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is planning to request a renewal of an approved information collection addressing paperwork and recordkeeping requirements regarding new technology because the OMB approval will expire on January 31, 2014.

FSIS has established procedures for notifying the Agency of any new technology intended for use in official establishments and plants (68 FR 6873). To follow the procedures, establishments, plants, and firms that manufacture and sell technology to

official establishments and plants notify the Agency by submitting documents describing the operation and purpose of the new technology. The documents should explain why the new technology will not (1) adversely affect the safety of the product, (2) jeopardize the safety of Federal inspection personnel, (3) interfere with inspection procedures, or (4) require a waiver of any Agency regulation. If use of the new technology will require a waiver of any Agency regulation, the notice should identify the regulation and explain why a waiver would be appropriate. If the new technology could affect FSIS regulations, product safety, inspection procedures, or the safety of inspection program personnel, the establishment or plant would need to submit a written protocol for an in-plant trial as part of a pre-use review. FSIS expects the submitter of a written protocol to provide data to the Agency throughout the duration of the in-plant trial.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 8 hours to complete a notification of intent to use new technology if no in-plant trial is necessary. If an in-plant trial is necessary, FSIS estimates that it will take an average of 80 hours to develop a protocol and an average of 80 more hours to collect data and keep records during the in-plant trial.

Respondents: Official establishments and plants; firms that manufacture or sell technology to official establishments and plants.

Estimated No. of Respondents: 75 respondents will submit notifications of intent to use new technology. 50 respondents will develop a protocol for and conduct an in-plant trial.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,600 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6077, South Building, Washington, DC 20250; Telephone: (202) 690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: November 25, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–28841 Filed 12–2–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags From Thailand: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review; 2009–2010

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 13, 2013, the United States Court of International Trade (Court or CIT) issued its final judgment affirming the Department of Commerce's (the Department's) final results of the remand redetermination [1] concerning the 2009–2010 administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand.[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.,* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final results of administrative review and is amending its final results of the administrative

[1] *See Results of Redetermination Pursuant to Court Remand Thai Plastic Bags Industries Co., Ltd.,* v. *United States, Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC, and Superbag Corporation,* Consol. Court No. 11–00408, dated July 10, 2013 (*Remand Results*).

[2] *See Thai Plastic Bags Industries Co., Ltd.,* v. *United States,* Consol. Court No. 11–00408, Slip Op. 13–139 (CIT November 13, 2013) (*TPBI* v. *United States*).

review of the antidumping duty order on PRCBs from Thailand covering the period of review (POR) of August 1, 2009 through July 31, 2010, with respect to the weighted-average dumping margins calculated for Thai Plastic Bags Industries Company (TPBI) and Landblue (Thailand) Co., Ltd. (Landblue).

DATES: *Effective Date:* November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683.

SUPPLEMENTARY INFORMATION: The Department published the final results of the 2009–2010 administrative review of the antidumping duty order on PRCBs from Thailand on November 3, 2011.[3] Both Thai Plastic Bags Industries Co., Ltd. and Polyethylene Retail Carrier Bag Committee (and its individual members, Hilex Poly Co., LLC and Superbag Corp. (collectively, the petitioner)) timely filed complaints with the CIT to challenge various aspects of the *Final Results.* On March 19, 2013, the Court remanded for the Department to reconsider its positions with regard to its calculation of the general and administrative expenses for TPBI and its adjustment of the surrogate selling expenses used to construct selling expenses for Landblue.[4] On July 10, 2013, the Department filed the *Remand Results* with the CIT, in which the Department revised its calculations of TPBI's general and administrative expenses and its adjustment of the surrogate selling expenses used to construct selling expenses for Landblue. Accordingly, the Department recalculated TPBI's weighted-average dumping margin from 35.71 percent to 35.79 percent and recalculated Landblue's weighted-average margin from 25.73 percent to 25.60 percent. On November 13, 2013, the Court affirmed the Department's *Remand Results.*[5]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (Act), the Department must publish a notice of a court decision not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's November 13, 2013, judgment constitutes a final decision of the CIT that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending its *Final Results* with respect to TPBI's and Landblue's weighted-average dumping margins for this POR. The revised weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Thai Plastic Bags Industries Company	35.79
Landblue (Thailand) Co., Ltd.	25.60

In the event that the CIT's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct United State Customs and Border Protection (CBP) to liquidate entries of subject merchandise by TPBI and Landblue in accordance with 19 CFR 351.212(b)(1).[6] Since the *Final Results,* the Department has not established a new cash deposit rate for Landblue. Therefore, consistent with section 751(a)(1) of the Act, the Department will instruct CBP to collect cash deposits for entries of subject merchandise by Landblue at the amended rate.[7] Because the order on PRCBs from Thailand was revoked in part with respect to TPBI effective July 28, 2010,[8] we will not instruct CBP to collect cash deposits for entries of subject merchandise by TPBI.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: November 25, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–28950 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review,* 76 FR 59999 (September 28, 2011) (*Final Results*), as amended, 76 FR 68137 (November 3, 2011) (*Amended Final Results*).

[4] *See Thai Plastic Bags Industries Co., Ltd.,* v. *United States,* Consol. Court No. 11–00408, Slip Op. 13–34 (CIT March 19, 2013).

[5] *See TPBI* v. *United States,* Slip Op. 13–139 at 25.

[6] *See Final Results,* 76 FR 60001 and *Amended Final Results.*

[7] *See Final Results,* 74 FR 68138.

[8] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand,* 75 FR 48940 (August 12, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Rescission of Antidumping Duty Administrative Review; 2011–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on certain stilbenic optical brightening agents (OBAs) from Taiwan for the period November 3, 2011, through April 30, 2013.

DATES: *Effective Date:* December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3477 and (202) 482–1690 respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2013, we published a notice of opportunity to request an administrative review of the antidumping duty order on OBAs from Taiwan for the period of review November 3, 2011, through April 30, 2013.[1] On June 28, 2013, in response to a May 31, 2013, request for review from the petitioner, Clariant Corporation (Clariant), and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on OBAs from Taiwan with respect to Teh

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 25423 (May 1, 2013).

Fong Min International Co., Ltd. (Teh Fong Min).[2]

On September 25, 2013, Clariant withdrew its request for an administrative review of Teh Fong Min.[3]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Clariant withdrew its request for review within the 90-day time limit. Further, because we rejected Teh Fong Min's June 3, 2013 request for the Department to conduct an administrative review, as untimely,[4] and received no other requests for review of Teh Fong Min or with respect to other companies subject to the order, we are rescinding the administrative review of the order in full. This rescission is in accordance with 19 CFR 351.213(d)(1).

Accordingly, the Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

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 Department's 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 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 the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 26, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–28943 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 38924 (June 28, 2013).

[3] *See* letter from Clariant to the Department, ''Certain Stilbenic Optical Brightening Agents from Taiwan: Withdrawal of Petitioner's Request for Administrative Review'' (September 25, 2013).

[4] *See* letter from Teh Fong Min, ''Certain Stilbenic Optical Brightening Agents (CSOBA)'' (June 3, 2013); *see also* letter from the Department to Teh Fong Min (June 5, 2013).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner

and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/enforcement* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://trade.gov/enforcement/* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2014.

	Period to be reviewed
Antidumping duty proceedings	
MEXICO: Carbon and Certain Alloy Steel Wire Rod A–201–830	10/1/12–9/30/13

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Deacero S.A. de C.V.	
THE PEOPLE'S REPUBLIC OF CHINA: Helical Spring Lock Washers [3] A–570–822	10/1/12–9/30/13
Jiangsu RC Import & Export Co., Ltd.	
Suzhou Guoxin Group Wang Shun Imp. and Exp. Co., Ltd.	
Winnsen Industry Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Steel Wire Garment Hangers [4] A–570–918	10/1/12–9/30/13
Feirongda Weaving Material Co. Ltd.	
Hangzhou Qingqing Mechanical Co. Ltd.	
Hangzhou Yingqing Material Co. Ltd.	
Hong Kong Wells Ltd ("Wells HK").	
Hongye (HK) Group Development Co. Ltd.	
Liaoning Metals & Mineral Imp/Exp Corp.	
Ningbo Bingcheng Import & Export Co. Ltd.	
Ningbo Dasheng Hanger Ind. Co. Ltd.	
Ningbo Peacebird Import & Export Co. Ltd.	
Shang Zhou Leather Shoes Plant.	
Shanghai Ding Ying Printing & Dyeing Co. Ltd.	
Shanghai Guoxing Metal Products Co. Ltd.	
Shanghai Jianhai International Trade Co. Ltd.	
Shanghai Lian Development Co. Ltd.	
Shanghai Shuang Qiang Embroidery Factory Co. Ltd.	
Shanghai Wells Hanger Co., Ltd.	
Shangyu Baoxiang Metal Manufactured Co. Ltd.	
Shaoxing Andrew Metal Manufactured Co. Ltd.	
Shaoxing Dingli Metal Clotheshorse Co. Ltd.	
Shaoxing Gangyuan Metal Manufactured Co. Ltd.	
Shaoxing Guochao Metallic Products Co., Ltd.	
Shaoxing Liangbao Metal Manufactured Co. Ltd.	
Shaoxing Meideli Hanger Co. Ltd.	
Shaoxing Shunji Metal Clotheshorse Co., Ltd.	
Shaoxing Shuren Tie Co. Ltd.	
Shaoxing Tongzhou Metal Manufactured Co. Ltd.	
Shaoxing Zhongbao Metal Manufactured Co. Ltd.	
Shaoxing Zhongdi Foreign Trade Co. Ltd.	
Tianjin Innovation International.	
Tianjin Tailai Import and Export Co. Ltd.	
Wesken International (Kunshan) Co. Ltd.	
Zhejiang Hongfei Plastic Industry Co. Ltd.	
Zhejiang Jaguar Import & Export Co. Ltd.	
Zhejiang Lucky Cloud Hanger Co. Ltd.	
Countervailing Duty Proceedings:	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Magnesia Carbon Bricks [5] C–570–955	1/1/12—12/31/12
Jinan Forever Imp. & Exp. Trading Co., Ltd.	
Jinan Linquan Imp. & Exp. Co. Ltd.	
Qingdao Blueshell Import & Export Corp.	
Yingkou Qinghua Group Imp. & Exp. Co., Ltd.	
Yixing Xinwei Leeshing Refractory Materials Co., Ltd.	

Suspension Agreements:

None

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Helical Spring Lock Washers from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Steel Wire Garment Hangers from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] The companies listed above were misspelled in the initiation notice that published on November 8, 2013 (78 FR 67104). The correct spelling of the companies is listed in this notice.

22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at the end of the *Interim Final Rule. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule. See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule''*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.* The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping (AD) and countervailing duty (CVD) proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: November 26, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–28948 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of the administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from Spain.[1] The period of review (''POR'') is June 1, 2011, through May 31, 2012. We gave interested parties an opportunity to

[1] *See Chlorinated Isocyanurates from Spain: Preliminary Results of the Antidumping Duty Administrative Review; 2011–12,* 78 FR 41367 (July 10, 2013) (''*Preliminary Results''*)

comment on the *Preliminary Results.* Based upon our analysis of the comments received, we made no changes to the margin calculations for these final results and continue to determine that Ercros S.A. (Ercros)[2] did not make sales below normal value. The final dumping margin is listed below in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Gene Calvert at (202) 482–3964, or (202) 482–3586, respectively; AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2013, the Department published the *Preliminary Results.*[3] On August 9, 2013, Ercros submitted a written request to reserve its right to participate in a hearing if Clearon Corp. and Occidental Chemical Corporation, the petitioners, requested one. Petitioners made no request for a hearing.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[4] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now November 25, 2013.

Scope of the Order

The merchandise subject to the order is chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cynauric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (Cl3(NCO)3), (2) sodium dichloroisocyanurate (dihydrate) (NaCl2(NCO)3 2H2O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl2(NCO)3). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates. Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from Spain; 2011–2012'' (''Issues and Decision Memorandum''), which is issued concurrent with and hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/enforcement.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made no changes to our calculations. Therefore, the final results do not differ from the preliminary results.[5]

Final Results of Review

We determine that Ercros' weighted-average dumping margin is *de minimis* (*i.e.,* less than 0.5 percent) for entries of subject merchandise that were produced and/or exported by Ercros and that entered, or were withdrawn from warehouse, for consumption during the period June 1, 2011, through May 31, 2012.

Assessment Rates

Pursuant to 19 CFR 351.212(b)(1), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions for the respondent subject to this review directly to CBP 15 days after the date of publication of the final results of this review. Since Ercros' weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[6] This clarification will apply to entries of subject merchandise during the period of review produced by Ercros for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate during the POR if there is no rate for the intermediate company(ies) involved in the transaction. *See* Assessment Policy Notice for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''the Act''): (1) The cash deposit rate for Ercros will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this

[2] Ercros formerly exported the subject merchandise through its 100 percent-owned subsidiary Aragonesas Industrias y Energia S.A. (Aragonesas). In 2010, Aragonesas was merged with Ercros.

[3] *See Preliminary Results.*

[4] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for the Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[5] *See* Issues and Decision Memorandum.

[6] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the all-others rate established in the LTFV investigation.[7] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 25, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

1. Whether Ercros Sales Were *Bona Fide*
2. Adjustment to U.S. Prices for U.S. Duty Costs
3. Distinction Between Sales to Distributors and Industrial Users

[FR Doc. 2013–28945 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value,* 70 FR 24506 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Goldenquality Seafood Corporation (''Goldenquality''), the Department of Commerce (''the Department'') initiated a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam'') covering the period February 1, 2013 through July 31, 2013.[1] On October 31, 2013, Goldenquality timely withdrew its request for a new shipper review. Accordingly, the Department is rescinding the new shipper review with respect to Goldenquality.

DATES: *Effective Date:* December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office V, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

Rescission of New Shipper Review

On September 27, 2013, the Department initiated a new shipper review of Goldenquality, and on October 31, 2013, Goldenquality withdrew its new shipper review request.[2] 19 CFR 351.214(f)(1) provides that, the Department may rescind a new shipper review, if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Given that Goldenquality withdrew its request for a new shipper review timely, the Department is rescinding the new shipper review of the antidumping duty order on certain frozen warmwater shrimp from Vietnam with respect to Goldenquality. Consequently, Goldenquality will remain part of the Vietnam-wide entity.

Assessment

Goldenquality remains under review in the ongoing administrative review covering the 2012–2013 POR, as part of the Vietnam-wide entity.[3] Therefore, the Department will not order liquidation of entries for Goldenquality. The Department intends to issue liquidation instructions for the Vietnam-wide entity, which will cover any entries by Goldenquality, 15 days after publication of the final results of the ongoing administrative review covering the 2012–2013 POR.

Cash Deposit

The Department will notify U.S. Customs and Border Protection (''CBP'') that bonding is no longer permitted to fulfill security requirements for subject merchandise produced and exported by Goldenquality that is entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**. The Department will notify CBP that a cash deposit of 25.76 percent should be collected for all shipments of subject merchandise by Goldenquality entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice.

Notifications to Interested Parties

This notice serves as a 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). 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 violation which is subject to sanction.

We are issuing and publishing this rescission and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: November 25, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–28953 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 78 FR 59650 (September 27, 2013) (''*Initiation Notice*'').

[2] *See* letter from Goldenquality entitled ''Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Withdrawal of Request for a New Shipper Review,'' dated October 31, 2013.

[3] *See Initiation of Antidumping and Countervailing Duty Reviews and Request for Revocation in Part,* 78 FR 19197 (March 29, 2013).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for January 2014

The following Sunset Review is scheduled for initiation in January 2014 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department contact
Antidumping Duty Proceedings	
Small Diameter Graphite Electrodes from China (A–570–929) (1st Review)	David Goldberger (202) 482–4136.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in January 2014.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in January 2014.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 13, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–28812 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances

review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after December 2013, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of December 2013,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period of Review
Antidumping Duty Proceedings	
Brazil: Carbon Steel Butt-Weld Pipe Fittings	
A–351–602	12/1/12–11/30/13
Chile: Certain Preserved Mushrooms	
A–337–804	12/1/12–11/30/13
India:	
Carbozole Violet Pigment 23	
A–533–838	12/1/12–11/30/13
Certain Hot-Rolled Carbon Steel Flat Products	
A–533–820	12/1/12–11/30/13
Commodity Matchbooks	
A–533–848	12/1/12–11/30/13
Stainless Steel Wire Rod	
A–533–808	12/1/12–11/30/13
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products	
A–560–812	12/1/12–11/30/13
Japan:	
P.C. Steel Wire Strand	
A–588–068	12/1/12–11/30/13
Welded Large Diameter Line Pipe	
A–588–857	12/1/12–11/30/13
Republic of Korea: Welded Astm A–312 Stainless Steel Pipe	
A–580–810	12/1/12–11/30/13
Socialist of Republic of Vietnam: Uncovered Innerspring Units	
A–552–803	12/1/12–11/30/13
South Africa: Uncovered Innerspring Units	
A–791–821	12/1/12–11/30/13
Taiwan:	
Carbon Steel Butt-Weld Pipe Fittings	
A–583–605	12/1/12–11/30/13
Steel Wire Garment Hangers	
A–583–849	8/2/12–11/30/13
Welded Astm A–312 Stainless Steel Pipe	
A–583–815	12/1/12–11/30/13
The People's Republic of China:	
Carbazole Violet Pigment 23	
A–570–892	12/1/12–11/30/13
Cased Pencils	
A–570–827	12/1/12–11/30/13

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of Review
Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules	
A–570–979	5/25/12–11/30/13
Hand Trucks and Parts Thereof	
A–570–891	12/1/12–11/30/13
Honey	
A–570–863	12/1/12–11/30/13
Malleable Cast Iron Pipe Fittings	
A–570–881	12/1/12–11/30/13
Multilayered Wood Flooring	
A–570–970	12/1/12–11/30/13
Porcelain-On-Steel Cooking Ware	
A–570–506	12/1/12–11/30/13
Silicomanganese	
A–570–828	12/1/12–11/30/13
Countervailing Duty Proceedings	
India:	
Carbozole Violet Pigment 23	
C–533–839	1/1/12–12/31/12
Certain Hot-Rolled Carbon Steel Flat Products	
C–533–821	1/1/13–12/31/13
Commodity Matchbooks	
C–533–849	1/1/12–12/31/12
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products	
C–560–813	1/1/13–12/31/13
Thailand: Certain Hot-Rolled Carbon Steel Flat Products	
C–549–818	1/1/12–12/31/12
The People's Republic of China:	
Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules	
C–570–980	3/26/12–12/31/12
Multilayered Wood Flooring	
C–570–971	1/1/12—12/31/12
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2013. If the Department does not receive, by the last day of December 2013, a request for review of entries covered by an order,

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 15, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–28818 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2013, the Department of Commerce (''the Department'') initiated the second sunset review of the antidumping duty order on non-malleable cast iron pipe fittings from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). Based on the notice of intent to participate and adequate substantive response filed by the domestic interested party, and the lack of response from any respondent interested party, the Department conducted an expedited (120-day) sunset review of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail is indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: *Effective Date:* December 3, 2013.

FOR FURTHER INFORMATION CONTACT: James Martinelli or Jamie Blair-Walker, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2923 or (202) 482–2615, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2003, the Department published the antidumping duty order on non-malleable cast iron pipe fittings from the PRC.[1] On July 1, 2013, the Department published the notice of initiation of the second sunset review of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC, pursuant to section 751(c) of the Act.[2] Between July 9 and July 11, 2013, pursuant to 19 CFR 351.218(d)(1), the Department received timely and complete notices of intent to participate in the sunset review from Ward Manufacturing and Anvil International, LLC (collectively, ''Petitioners''), domestic producers of non-malleable cast iron pipe fittings. On July 31, 2013, pursuant to 19 CFR 351.218(d)(3), Petitioners filed a timely and adequate substantive response. The Department did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[3] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the final results of this sunset review is now November 14, 2013.

Scope of the Order

The products covered by the order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications.

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60, 7307.19.30.85, 7326.90.8588, and 7326.90.8588. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[4]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying I&D Memorandum, which is hereby adopted by this notice. The issues discussed in the I&D Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. The I&D Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed I&D Memorandum and the electronic versions of the I&D Memorandum are identical in content.

Final Results of Sunset Review

The Department determines that revocation of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC would be likely to lead to continuation or recurrence of dumping at weigh average margins up to 75.50 percent.

[1] *See Notice of Antidumping Duty Order: Non-malleable Cast Iron Pipe Fittings From the People's Republic of China,* 68 FR 16765 (April 7, 2003).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 39256 (July 1, 2013).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[4] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Non-malleable Cast Iron Pipe Fittings from the People's Republic of China,'' dated concurrently with this notice (''I&D Memorandum''), for full scope language.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 14, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the dumping margin likely to prevail

[FR Doc. 2013–28952 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–991]

Countervailing Duty Investigation of Chlorinated Isocyanurates From the People's Republic of China: Postponement of Preliminary Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0413.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 2013, the Department of Commerce (the ''Department'') initiated the countervailing duty investigation of chlorinated isocyanurates (''chlorinated isos'') from the People's Republic of China (''PRC'').[1] Currently, the preliminary determination is due no later than December 8, 2013.[2]

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the ''Act''), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1) of the Act permits the Department to postpone making the preliminary determination until no later than 130 days after the date on which it initiated the investigation if, among other reasons, the petitioner makes a timely request for a postponement, or the Department concludes that the parties concerned are cooperating and determines that the investigation is extraordinarily complicated. Although Clearon Corp. and Occidental Chemical Corporation (''Petitioners'') made a request on November 19, 2013, to postpone the preliminary countervailing duty determination, this request was made after the applicable deadline had passed.[3] However, the original countervailing duty questionnaire is not due to the Department until December 6, 2013, three days before the current date of the preliminary determination. In addition, the Department determines that, thus far, the parties concerned are cooperating because each has made an entry of appearance in this investigation.[4] Also, the Department must analyze 30 complicated programs [5] for each respondent, including companies that are cross-owned with each respondent, and likely issue multiple supplemental questionnaires. For all these reasons, the Department finds this investigation to be extraordinarily complicated within the meaning of section 731(c)(1)(B) of the Act, and is hereby fully postponing the preliminary countervailing duty determination by 130 days.[6]

The Department notes that 130 days from the initiation date, plus the 16 days tolled due to the closure of the Federal Government, is February 11, 2014. Therefore, pursuant to the discretion afforded to the Department under section 703(c)(1)(B) of the Act, we are postponing the due date for the preliminary determination to no later than February 11, 2014.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 22, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–28833 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 78 FR 59001 (September 25, 2013).

[2] As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. *See* Memorandum for the Record, from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated October 18, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. As noted above, the revised deadline for the preliminary determination of this investigation is December 8, 2013.

[3] *See* Petitioners' November 19, 2013 letter requesting postponement of the preliminary determination.

[4] *See, e.g.,* The Government of the People's Republic of China November 20, 2013 submission, ''GOC Notice of Appearance and APO Application: Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China.''

[5] The number of programs may be found in the ''Countervailing Duty Investigation Initiation Checklist: Chlorinated Isocyanurates from the People's Republic of China,'' at 7—29.

[6] On November 19, 2013, the Department notified interested parties that we intend to fully postpone the preliminary determination of this investigation in a forthcoming **Federal Register** notice. *See* Memo to the File, from Paul Walker, Case Analyst, ''Countervailing Duty Investigation on Chlorinated Isocyanurates from the People's Republic of China: Postponement of the Preliminary Determination,'' dated November 19, 2013.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Vacancies on the U.S. Section of the U.S.-Iraq Business Dialogue

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The U.S. Secretary of Commerce and the Iraq Minister of Trade in July 2006 established the U.S.-Iraq Business Dialogue (Business Dialogue or Dialogue) as a bilateral forum to facilitate private sector business growth in Iraq and to strengthen trade and investment ties between the United States and Iraq. This notice announces ten open membership opportunities for representatives of American industry to join the U.S. section of the Dialogue.

DATES: Applications must be received no later than December 13, 2013; 5:00pm EST.

ADDRESSES: Please send requests for consideration and supporting material to Mr. Tom Sams, Acting Director, Office of the Middle East, U.S. Department of Commerce, either by fax on 202–482–0878 or by mail to U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 2029B, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kevin M. Reichelt, Office of the Middle East, U.S. Department of Commerce, Room 2029B, Washington, DC 20230. Email: *Kevin.Reichelt@trade.gov;* Phone: 202–482–2896.

SUPPLEMENTARY INFORMATION: The U.S. Secretary of Commerce and the Iraqi Minister of Trade co-chair the Dialogue. The Dialogue consists of a U.S. Section and an Iraqi Section. Each Section consists of members from the private sector, representing the views and interests of the private sector business community. Each Party appoints the members to its respective Section. The Sections provide policy advice and counsel to the U.S. Secretary of Commerce and to Iraq's Minister of Trade that reflect private sector views, needs, and concerns regarding private sector business development in Iraq and enhanced bilateral commercial ties that would form the basis for expanded trade between the United States and Iraq. The Dialogue will exchange information and encourage bilateral discussions that address the following areas:

—Factors that affect the growth of private sector business in Iraq, including disincentives to trade and investment and regulatory obstacles to job creation and investment growth;
—Initiatives that the Government of Iraq might take, such as enacting, amending, enforcing, or repealing laws and regulations, to promote private sector business growth in Iraq;
—Promotion of business opportunities in both Iraq and the United States, and identification of opportunities for U.S. and Iraqi firms to work together; and
—Attracting U.S. businesses to opportunities in Iraq and serving as a catalyst for Iraqi private sector growth.

Applications to represent any sector will be considered. The U.S. section will represent a cross-section of American businesses.

Members serve in a representative capacity representing the views and interests of their particular industries. Members are not special government employees, and receive no compensation for their participation in Dialogue activities. Only appointed members may participate in Dialogue meetings; substitutes and alternates will not be permitted. Section members serve for three-year terms, but may be reappointed. U.S. Section members serve at the discretion of the Secretary of Commerce.

Candidates will be evaluated based on: their interest in the Iraqi market; export/investment experience in the Iraqi market; contribution to diversity based on size of company, geographic location, and sector; and ability to initiate and be responsible for activities in which the Business Dialogue will be active.

In order to be eligible for membership in the U.S. section, potential candidates shall be:

—A U.S. citizen residing in the United States or able to travel to the United States or other location to attend official Business Dialogue meetings;
—The President or CEO (or comparable level of responsibility) of a private sector company, or, in the case of large companies, a person having substantial responsibility for the company's commercial activities in Iraq, either of which shall possess unique experience with or specialized knowledge about the commercial environment in Iraq; or the head of a non-profit entity, such as a trade or industry association, who possesses unique technical expertise, and the ability to provide counsel with respect to private sector business development in Iraq; and
—Not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.
—Applicants may not be federally registered lobbyists, and, if appointed, will not be allowed to continue to serve as members of the U.S. Section of the Dialogue if the member becomes a federally-registered lobbyist.

Members will be selected on the basis of who best will carry out the objectives of the Business Dialogue as described above and as stated in the Terms of Reference for the Dialogue. (The Terms of Reference are available from the point of contact listed above.) Recommendations for appointment will be made to the Secretary of Commerce. All candidates will be notified of whether they have been selected.

To be considered for membership, please submit the following information as instructed in the addresses and dates captions above: name(s) and title(s) of the individual(s) requesting consideration; name and address of company or non-profit entity to be represented; size of the company or non-profit entity; description of relevant product, service, or technical expertise; size of company's export trade, investment, and/or international program experience; nature of operations or interest in Iraq; responsibilities of the candidate within the company or non-profit entity; and a brief statement of why the candidate should be appointed, including information about the candidate's ability to initiate and be responsible for activities in which the Business Dialogue will be active.

Tom Sams,

Acting Director, Office of the Middle East, International Trade Administration.

[FR Doc. 2013–28838 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 131113954–3954–01]

Request for Public Comments on Draft Final Report on the Technical Investigation of the May 22, 2011 Tornado in Joplin, Missouri

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, announces the availability for public comment of the draft final report of the investigation conducted by NIST into the tornado that impacted Joplin, Missouri on May 22, 2011. NIST will consider all comments received on the draft report before it is issued in final form.

DATES: Comments on the draft report must be received no later than 5:00 p.m. ET, Monday, January 6, 2014.

ADDRESSES: An electronic copy of the draft report may be found on the Joplin Investigation Web page *http://www.nist.gov/el/disasterstudies/weather/joplin_tornado_2011.cfm.* Comments may be submitted by email to *disaster@nist.gov* or by mail to: NIST Technical Investigation Joplin, National Institute of Standards and Technology, Stop 8611, Gaithersburg, MD 20899–8611.

All comments received will be posted without redaction on the NIST Web site at: *http://www.nist.gov/el/disasterstudies/weather/joplin_tornado_2011.cfm.*

FOR FURTHER INFORMATION CONTACT: For further information or if you have

questions, please contact Dr. Long Phan by email at *disaster@nist.gov* or by telephone at 301–975–6077.

SUPPLEMENTARY INFORMATION: In response to the tornado that impacted Joplin, Missouri on May 22, 2011 (Joplin tornado), the National Institute of Standards and Technology (NIST) sent four engineers to the area to conduct a preliminary reconnaissance to conduct an initial assessment of the event to assist the NIST Director in determining whether a full technical investigation of the event was warranted. Based on the analysis of the data collected and other pertinent information, the NIST Director established a Team under the authorities of the National Construction Safety Team (NCST) Act (15 U.S.C. 7301 *et seq.)* on June 29, 2011 to conduct a detailed technical investigation. The establishment of the NCST Team was announced in the **Federal Register** on July 19, 2011 (76 FR 42683).

The investigation objectives were:

1. Determine the tornado hazard characteristics and associated wind fields in the context of historical data.
2. Determine the response of residential, commercial, and critical buildings, including the performance of designated safe areas.
3. Determine the performance of lifelines as it relates to the continuity of operations of residential, commercial, and critical buildings.
4. Determine the pattern, location, and cause of fatalities and injuries, and associated emergency communications and public response.
5. Identify, as specifically as possible, areas in current building, fire, and emergency communications codes, standards, and practices that warrant revision.

The draft report outlines 47 findings related to the May 22, 2011, Joplin tornado and concludes with a list of 16 recommendations for action in areas of improved measurement and characterization of tornado hazards, new methods for tornado resistant design of buildings, enhanced guidance for community tornado sheltering, and improved and standardized emergency communications.

Request for Public Comment: Persons interested in commenting on the draft investigation report should submit their comments as instructed above. NIST will consider all comments received and may revise the report based on such comments. All comments will be made publicly available without redaction, so the public should not include personal or proprietary information in comments. All comments received in response to this notice will be made publicly available without redaction, so members of the public should not include personal or proprietary information in comments.

Comments submitted should be specific to the maximum extent possible: they should clearly state the issue, location (page number, paragraph or sentence), provide a short reason for any suggested change, and provide suggested language for the requested revision.

Comments may be submitted to NIST in two ways. Comments may be submitted by email to *disaster@nist.gov,* or by mail to:

NIST Technical Investigation Joplin, National Institute of Standards and Technology, Stop 8611, Gaithersburg, MD 20899–8611.

All comments should contain the following information:

Name (Optional):
Affiliation (Optional):
Contact (Optional): Phone number or email address where the commenter can be contacted in case of questions about their comment
Page Number:
Paragraph/Sentence: (e.g., paragraph 2/sentences 2–4)
Comment:
Reason for Comment:
Suggestion for Revision:

Dated: November 26, 2013.

Mary Saunders,

Associate Director for Management Resources.

[FR Doc. 2013–28946 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XD010]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meetings (conference calls).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene two conference calls of its Groundfish Essential Fish Habitat Review Committee (EFHRC).

DATES: The first conference call will be held Tuesday, January 21, 2014, from 1 p.m.–3 p.m. The second conference call will be held Tuesday, February 4, 2014, from 9 a.m.–11 a.m.

ADDRESSES: For those members of the public who wish to attend the conference call, a public listening station will be available at the Pacific Council offices: 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Please contact the Pacific Council ahead of time if you wish to attend the public listening station.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the conference calls is to discuss and finalize the Phase 2 Report, which summarizes the status of the essential fish habitat periodic review, describes the proposals that were received, and makes recommendations to the Pacific Council for further action. The Phase 2 Report is scheduled to be considered by the Pacific Council at its March, 2014 meeting.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: November 27, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–28864 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XD011]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council)

will convene a meeting of its Coastal Pelagic Species Management Team (CPSMT).

DATES: The meeting will be held Tuesday, January 7 through Thursday, January 9, 2014. The meeting will begin the first day at 10 a.m. and at 8 a.m. each subsequent day. The meeting will conclude each day at 5 p.m. or when business for the day has been completed.

ADDRESSES: The meeting will be held in the Pacific Conference Room of the NOAA Southwest Fisheries Science Center, 8901 La Jolla Shores Dr., La Jolla, CA 92037–1508. The meeting may move to a different conference room on the final day (January 9, 2014).

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Pacific Council Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to develop advice for the Pacific Council regarding the temperature index used as a correlate for sardine recruitment, as well as other considerations regarding elements of the Pacific sardine harvest control rule. The CPSMT will develop a report for inclusion in the advance briefing book materials for the March, 2014 Council meeting.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam (858) 546–7170, at least 5 days prior to the meeting date.

Dated: November 27, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–28865 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC863

Taking of Marine Mammals Incidental to Specified Activities: Mukilteo Ferry Terminal Construction Work

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Washington State Department of Transportation (WSDOT) Ferries Division (WSF) for an authorization to take small numbers of eight species of marine mammals, by Level B harassment, incidental to proposed construction activities at the Mukilteo Multimodal Ferry Terminal in Mukilteo, Snohomish County, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to WSDOT to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than January 2, 2014.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application may be obtained by writing to the address specified above or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . .an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On August 30, 2013, WSF submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of eight marine mammal species incidental to construction work associated with the Mukilteo Ferry

Terminal replacement project in Mukilteo, Snohomish County, Washington. The new terminal will be located to the east of the existing location at the site of the former U.S. Department of Defense Fuel Supply Point facility, known as the Tank Farm property, which includes a large pier extending into Possession Sound (Figure 1–3 of the WSF IHA application). Completion of the entire project will occur over 4 consecutive years. WSF plans to submit an IHA request for each consecutive year of construction. The current IHA application is for the first year of construction, which is limited to removing the Tank Farm Pier.

After receiving NMFS comment, on October 17, 2013, WSF submitted a revised IHA application. The action discussed in this document is based on WSF's October 17, 2013, IHA application. NMFS is proposing to authorize the Level B harassment of the following marine mammal species: harbor seal, California sea lion, Steller sea lion, harbor porpoise, Dall's porpoise, killer whale, gray whale, and humpback whale.

Description of the Specified Activity

The Mukilteo Tank Farm Pier, which has not been used for fuel transfers since the late 1970s, covers approximately 138,080 ft^2 (3.17 acres) over-water and contains approximately 3,900 12-inch diameter creosote-treated piles. Demolition of the pier will remove approximately 7,300 tons of creosote-treated timber from the aquatic environment. Demolition will take approximately ten months over two in-water work windows. Removal of the pier will occur from land and from a barge containing a derrick, crane and other necessary equipment.

Piles will be removed with a vibratory hammer or by direct pull using a chain wrapped around the pile. The crane operator will take measures to reduce turbidity, such as vibrating the pile slightly to break the bond between the pile and surrounding soil, and removing the pile slowly; or if using direct pull, keep the rate at which piles are removed low enough to meet regulatory turbidity limit requirements. If piles are so deteriorated they cannot be removed using either the vibratory or direct pull method, the operator will use a clamshell to pull the piles from below the mudline, or cut at or just below the mudline (up to one foot) using a hydraulic saw.

Pile removal and demolition of creosote-treated timber elements of the Tank Farm Pier will take place between July 15 and February 15. All work will occur in water depths between 0 and -30 feet mean lower-low water.

The first year of construction activities for the Mukilteo Multimodal Project is limited to removing the Tank Farm Pier. The noise produced by the proposed vibratory pile extraction may impact marine mammals. Direct pull and clamshell removal are not expected to exceed noise levels that would harm or harass marine mammals. These extraction methods are described below.

Vibratory Hammer Removal

Vibratory hammer extraction is a common method for removing timber piling. A vibratory hammer is suspended by cable from a crane and derrick, and positioned on the top of a pile. The pile is then unseated from the sediments by engaging the hammer, creating a vibration that loosens the sediments binding the pile, and then slowly lifting up on the hammer with the aid of the crane. Once unseated, the crane continues to raise the hammer and pulls the pile from the sediment.

When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland. Vibratory removal will take approximately 10 to 15 minutes per pile, depending on sediment conditions.

Direct Pull and Clamshell Removal

Older timber pilings are particularly prone to breaking at the mudline because of damage from marine borers and vessel impacts. In some cases, removal with a vibratory hammer is not possible if the pile is too fragile to withstand the hammer force. Broken or damaged piles may be removed by wrapping the piles with a cable and pulling them directly from the sediment with a crane. If the piles break below the waterline, the pile stubs will be removed with a clamshell bucket, a hinged steel apparatus that operates like a set of steel jaws. The bucket will be lowered from a crane and the jaws will grasp the pile stub as the crane pulled up. The broken piling and stubs will be loaded onto the barge for off-site disposal. Clamshell removal will be used only if necessary, as it will produce temporary, localized turbidity impacts. Turbidity will be kept within required regulatory limits. Direct pull and clamshell removal do not produce noise that could impact marine mammals.

Underwater Noise Levels

The project includes vibratory removal of 12-inch timber piles. Based on in-water measurements at the WSF Port Townsend Ferry Terminal (Laughlin 2011a), removal of 12-inch timber piles generated 149 to 152 decibels (dB) root mean square (rms) in reference to 1 microPa (re 1 μPa) with an overall average rms sound pressure level (SPL) of 150 dB (rms) re 1 μPa measured at 16 meters. A worst-case noise level for vibratory removal of 12-inch timber piles will be 152 dB (rms) re 1 μPa at 16 meters.

Under current NMFS guidelines, the ''exclusion zone'' for marine mammal exposure to noise sources is customarily defined as the area within which received sound levels are ≥180 dB (rms) re 1 μPa for cetaceans and ≥190 dB (rms) re 1 μPa for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zones (Richardson *et al.* 1995). Currently, NMFS uses 160 dB (rms) re 1 μPa as the threshold for Level B behavioral harassment from impulses noise, and 120 dB (rms) re 1 μPa for Level B behavioral harassment from non-impulse noise.

For the WSF's proposed Tank Farm Pier pile removal project, since the source level from vibratory pile removal is estimated at 152 dB (rms) re 1 μPa, there will be no exclusion zone for marine mammals. The sounds generated from vibratory pile removal are non-impulse noises, therefore the zone of influence (ZOI) for marine mammal behavioral harassment would be where received level falls to 120 dB (rms) re 1 μPa. However, since the ambient noise level at the vicinity of the proposed project area is between 122 to 124 dB re 1 μPa, depending on marine mammal functional hearing groups (Laughlin 2011b), the received level of 120 dB re 1 μPa would be below the ambient level. Therefore, for this proposed project, 122 dB re 1 μPa is used as the threshold for Level B behavioral harassment.

Using the practical geometrical spreading loss model for underwater sound propagation, it is estimated that the radius of the ZOI is approximately 1,600 m from the source.

Airborne Noise Levels

No unweighted in-air source level data is available for 12-inch timber pile removal. Unweighted in-air measurements of vibratory driving of a 30-inch steel pile collected during the 2010 WSF Coupeville Ferry Terminal Wingwalls Replacement Project ranged from 95–97.8 dB (rms) re 1 20 μPa at 50

feet (Laughlin 2010). Removal of 12-inch timber pile will be assumed to be the same as 30-inch pile driving.

NMFS currently considers in-air noise behavioral disturbance thresholds of 90 dB (rms) re 20 μPa (unweighted) for harbor seals, and 100 dB (rms) re 20 μPa (unweighted) for all other pinnipeds.

Using the measurement of 97.8 dB (rms) at 50 feet, and attenuating at 6 dBA per doubling distance overwater, in-air noise from vibratory pile removal will attenuate to 90 dB (rms) re 20 μPa for harbor seal at approximately 123 ft (37 m), and to 100 dB (rms) re 20 μPa for sea lions at approximately 39 ft (12 m).

The closest documented harbor seal haul-outs are the Naval Station Everett floating security fence and the Port Gardner log booms (4.5 miles NE). The closest documented sea lion haul-outs are the Everett Harbor navigation buoys (3.0/3.5 miles NE).

Dates and Duration

The daily construction window for pile removal will begin no sooner than 30 minutes after sunrise to allow for initial marine mammal monitoring, and will end at sunset (or soon after), when visibility decreases to the point that effective marine mammal monitoring is not possible.

Vibratory pile removal will take approximately 10 to 15 minutes per pile. Assuming the worst case of 15 minutes per pile (with no direct pull or clamshell removal), removal of 3,900 piles will take and estimated 675–975 hours over 180 days of pile removal over two seasons. The estimate of 180 days provides for some shorter pile pulling days during winter, transition time to dig out broken piles, and removal of decking. This proposed IHA would cover Year One only, with removal of 1,835 piles taking approximately 90 days. It is likely that the actual hours of vibratory pile removal will be less, as the duration assumes that every pile will be removed with a vibratory hammer. It is likely that many piles will require direct pull or clamshell removal, both of which are quicker than vibratory extraction. The construction work is expected to occur between September 1, 2014, and August 31, 2015.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*P. dalli*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2013), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf.* Refer to that document for information on these species. Specific information concerning these species in the vicinity of the proposed action area is provided below.

Harbor Seal

Harbor seals are members of the true seal family (Phocidae). For management purposes, differences in mean pupping date (Temte 1986), movement patterns (Jeffries 1985; Brown 1988), pollutant loads (Calambokidis *et al.* 1985), and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng 1988). The three distinct stocks are: (1) Inland waters of Washington State (including Hood Canal, Puget Sound, Georgia Basin and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2011).

The Washington Inland Waters stock (which includes Hood Canal, Puget Sound, Georgia Basin and the Strait of Juan de Fuca out to Cape Flattery) may be present near the project site. Pupping seasons vary by geographic region. For the northern Puget Sound region, pups are born from late June through August (WDFW 2012). After October 1 all pups in the inland waters of Washington are weaned. Of the three pinniped species that commonly occur within the region of activity, harbor seals are the most numerous and the only one that breeds in the inland marine waters of Washington (Calambokidis and Baird 1994).

In 1999, Jeffries *et al.* (2003) recorded a mean count of 9,550 harbor seals in Washington's inland marine waters, and estimated the total population to be approximately 14,612 animals (including the Strait of Juan de Fuca). There are an estimated 32,000 harbor seals in Washington today, and their population appears to have stabilized (NMFS 2011a; Jeffries 2013).

Harbor seals are the most numerous marine mammal species in Puget Sound. Harbor seals are non-migratory; their local movements are associated with such factors as tides, weather, season, food availability and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981). They are not known to make extensive pelagic migrations, although some long-distance movements of tagged animals in Alaska (174 km) and along the U.S. west coast (up to 550 km) have been recorded (Pitcher and McAllister 1981; Brown and Mate 1983; Herder 1983).

Harbor seals haul out on rocks, reefs and beaches, and feed in marine, estuarine and occasionally fresh waters. Harbor seals display strong fidelity for haul-out sites (Pitcher and Calkins 1979; Pitcher and McAllister 1981). The closest documented harbor seal haul-out sites to the Tank Farm Pier are the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles northeast of the project site. Harbor seals may also haul-out on undocumented sites in the area, such as beaches.

Since June 2012, Naval Station Everett personnel have been conducting counts of the number of harbor seals that use the in-water security fence floats as haul-outs. As of April 18, 2013, the highest count was 343 seals observed during one day in October 2012 (U.S. Navy 2013). The average number of seals hauled out for the 8 days of monitoring falling within the Tank Farm Pier removal work window (July 15–February 15) was 117 (U.S. Navy 2013). However, given the distance from the haul-out to the Tank Farm Pier, the number of affected seals would be less.

Since 2007, the Everett Community College Ocean Research College Academy (ORCA) has conducted quarterly cruises that include monitoring stations within the ZOI. Marine mammal sightings data were collected during these cruises. During 24 cruises within the ZOI falling within the Tank Farm Pier removal window (July 15–February 15), the highest count was 13 seals observed during one day in November of 2012. The average number of seals observed during these cruises was 2.4 (ORCA 2013).

According to the NMFS National Stranding Database (2007–2013), there were 7 confirmed harbor seal strandings within 0.5 miles of Tank Farm Pier (NMFS 2013b).

California Sea Lion

Washington California sea lions are part of the U.S. stock, which begins at the U.S./Mexico border and extends northward into Canada. The U.S. stock was estimated at 296,750 in the 2012 Stock Assessment Report (SAR) and may be at carrying capacity, although more data are needed to verify that determination (Carretta *et al.* 2013). Some 3,000 to 5,000 animals are estimated to move into northwest waters

(both Washington and British Columbia) during the fall (September) and remain until the late spring (May) when most return to breeding rookeries in California and Mexico (Jeffries *et al.* 2000). Peak counts of over 1,000 animals have been made in Puget Sound (Jeffries *et al.* 2000).

California sea lions breed on islands off Baja Mexico and southern California with primarily males migrating to feed in the northern waters (Everitt *et al.* 1980). Females remain in the waters near their breeding rookeries off California and Mexico. All age classes of males are seasonally present in Washington waters (WDFW 2000).

California sea lions do not avoid areas with heavy or frequent human activity, but rather may approach certain areas to investigate. This species typically does not flush from a buoy or haulout if approached.

California sea lions were unknown in Puget Sound until approximately 1979 (Steiger and Calambokidis 1986). Everitt *et al.* (1980) reported the initial occurrence of large numbers at Port Gardner, Everett (northern Puget Sound) in the spring of 1979. The number of California sea lions using the Everett haul-out at that time numbered around 1,000. Similar sightings and increases in numbers were documented throughout the region after the initial sighting in 1979 (Steiger and Calambokidis 1986), including urbanized areas such as Elliot Bay near Seattle and heavily used areas of central Puget Sound (Gearin *et al.* 1986). In Washington, California sea lions use haul-out sites within all inland water regions (WDFW 2000). The movement of California sea lions into Puget Sound could be an expansion in range of a growing population (Steiger and Calambokidis 1986).

The closest documented California sea lion haul-out sites to the Tank Farm Pier are the Everett Harbor navigation buoys (3.0/3.5 miles NE), and the Naval Station Everett floating security fence and Port Gardner log booms (both 4.5 miles NE).

Since June 2012, Naval Station Everett personnel have been conducting counts of the number of sea lions that use the in-water security fence floats as haul-outs. As of April 18, 2013, the highest count has been 123 California sea lions observed during one day in November 2012. The average number of California sea lions hauled out for the 8 days of monitoring falling within the Tank Farm Pier removal work window (July 15–February 15) is 43 (U.S. Navy 2013). However, given the distance from the haul-out to the Tank Farm Pier, it is not expected that the same numbers would be present in the ZOI.

Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. Marine mammal sightings data were collected during these cruises. During 10 cruises within the ZOI falling within the Tank Farm Pier removal window (July 15–February 15), the highest count was 6 California sea lions observed during one day in October of 2008. The average number of sea lions observed during these cruises was 2.8 (ORCA 2013).

According to the NMFS National Stranding Database (2007–2013), there was one confirmed California sea lion stranding within 0.5 miles of the Tank Farm Pier (NMFS 2013b).

Steller Sea Lion

The Eastern stock of Steller sea lion may be present near the project site. The eastern stock of Steller sea lions is estimated to be 52,847 individuals based on 2001 through 2009 pup counts (Allen and Angliss 2011). For Washington inland waters, Steller sea lion abundances vary seasonally with a minimum estimate of 1,000 to 2,000 individuals present or passing through the Strait of Juan de Fuca in fall and winter months (WSDOT 2013).

Steller sea lion numbers in Washington State decline during the summer months, which correspond to the breeding season at Oregon and British Columbia rookeries (approximately late May to early June) and peak during the fall and winter months (WDFW 2000). A few Steller sea lions can be observed year-round in Puget Sound although most of the breeding age animals return to rookeries in the spring and summer (WSDOT 2013).

The Eastern Steller sea lions were listed as threatened under the Endangered Species Act (ESA). On October 23, 2013, NMFS removed the Eastern Steller sea lion from the ESA list as this stock is determined to have been recovered.

Breeding rookeries for the eastern stock are located along the California, Oregon, British Columbia, and southeast Alaska coasts, but not along the Washington coast or in inland Washington waters (Angliss and Outlaw 2007). Adult Steller sea lions congregate at rookeries in Oregon, California, and British Columbia for pupping and breeding from late May to early June (Gisiner 1985).

Steller sea lions primarily use haul-out sites on the outer coast of Washington and in the Strait of Juan de Fuca along Vancouver Island in British Columbia. Only sub-adults or non-breeding adults may be found in the inland waters of Washington (Pitcher *et al.* 2007). However, the number of inland waters haul-out sites has increased in recent years.

Since June 2012, Naval Station Everett personnel have been conducting counts of the number of sea lions that use the in-water security fence floats as haul-outs. No Steller sea lions have been observed using the security barrier floats haul-out to date (U.S. Navy 2013).

Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No Steller sea lions have been observed in the ZOI during these cruises (ORCA 2013).

The closest documented Steller Sea lion haul-outs to the Tank Farm Pier are the Orchard Rocks and Rich Passage buoys near S. Bainbridge Island (19 miles SW), and Craven Rock near Marrowstone Island (23 miles NW). Haul-outs are generally occupied from October through May, which overlaps with the in-water work window. Any Steller sea lions near the Tank Farm Pier would be transiting through the area.

There is no data available on the number of Steller sea lions that use the Orchard Rocks. Up to 12 Steller sea lions have been observed using the Craven Rock haul-out off of Marrowstone Island in northern Puget Sound (WSF 2010). However, given the distance from this haul-out to the Tank Farm Pier, it is not expected that the same numbers would be present in the ZOI.

According to the NMFS National Stranding Database (2007–2013), there were no Steller sea lion strandings in the area of the Tank Farm Pier (NMFS 2013b).

Harbor Porpoise

The Washington Inland Waters Stock of harbor porpoise may be found near the project site. The Washington Inland Waters Stock occurs in waters east of Cape Flattery (Strait of Juan de Fuca, San Juan Island Region, and Puget Sound).

The Washington Inland Waters Stock mean abundance estimate based on 2002 and 2003 aerial surveys conducted in the Strait of Juan de Fuca, San Juan Islands, Gulf Islands, and Strait of Georgia is 10,682 harbor porpoises (NMFS 2011d).

No harbor porpoises were observed within Puget Sound proper during comprehensive harbor porpoise surveys (Osmek *et al.* 1994) or Puget Sound Ambient Monitoring Program (PSAMP) surveys conducted in the 1990s (WDFW 2008). Declines were attributed to gill-net fishing, increased vessel activity,

contaminants, and competition with Dall's porpoise.

However, populations appear to be rebounding with increased sightings in central Puget Sound (Carretta *et al.* 2007b) and southern Puget Sound (WDFW 2008). Recent systematic boat surveys of the main basin indicate that at least several hundred and possibly as many as low thousands of harbor porpoise are now present. While the reasons for this recolonization are unclear, it is possible that changing conditions outside of Puget Sound, as evidenced by a tripling of the population in the adjacent waters of the Strait of Juan de Fuca and San Juan Islands since the early 1990s, and the recent higher number of harbor porpoise mortalities in coastal waters of Oregon and Washington, may have played a role in encouraging harbor porpoise to explore and shift into areas like Puget Sound (Hanson *et al.* 2011).

Harbor porpoises are common in the Strait of Juan de Fuca and south into Admiralty Inlet, especially during the winter, and are becoming more common south of Admiralty Inlet. Little information exists on harbor porpoise movements and stock structure near the Mukilteo area, although it is suspected that in some areas harbor porpoises migrate (based on seasonal shifts in distribution). For instance Hall (2004) found harbor porpoises off Canada's southern Vancouver Island to peak during late summer, while the Washington State Department of Fish and Wildlife's (WDFW) Puget Sound Ambient Monitoring Program (PSAMP) data show peaks in Washington waters to occur during the winter.

Hall (2004) found that the frequency of sighting of harbor porpoises decreased with increasing depth beyond 150 m with the highest numbers observed at water depths ranging from 61 to 100 m. Although harbor porpoises have been spotted in deep water, they tend to remain in shallower shelf waters (<150 m) where they are most often observed in small groups of one to eight animals (Baird 2003). Water depths within the Tank Farm Pier ZOI range from 0 to 192 m.

Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No harbor porpoise have been observed within the ZOI during these cruises (ORCA 2013).

According to the NMFS National Stranding Database, there was one confirmed harbor porpoise stranding within 0.5 miles of the Tank Farm Pier from 2007 to 2013 (NMFS 2013b).

Dall's Porpoise

The California, Oregon, and Washington Stock of Dall's porpoise may be found near the project site. The most recent estimate of Dall's porpoise stock abundance is 42,000, based on 2005 and 2008 summer/autumn vessel-based line transect surveys of California, Oregon, and Washington waters (Carretta *et al.* 2011). Within the inland waters of Washington and British Columbia, this species is most abundant in the Strait of Juan de Fuca east to the San Juan Islands. The most recent Washington's inland waters estimate is 900 animals (Calambokidis *et al.* 1997). Prior to the 1940s, Dall's porpoises were not reported in Puget Sound.

Dall's porpoises are migratory and appear to have predictable seasonal movements driven by changes in oceanographic conditions (Green *et al.* 1992, 1993), and are most abundant in Puget Sound during the winter (Nysewander *et al.* 2005; WDFW 2008). Despite their migrations, Dall's porpoises occur in all areas of inland Washington at all times of year (WSDOT 2013), but with different distributions throughout Puget Sound from winter to summer. The average winter group size is three animals (WDFW 2008).

Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No Dall's porpoise have been observed within the ZOI during these cruises (ORCA 2013).

According to the NMFS National Stranding Database (2007–2013), there were no Dall's porpoise strandings in the area of the Tank Farm Pier (NMFS 2013b).

Killer Whale

The Eastern North Pacific Southern Resident (SR) and West Coast Transient stocks of killer whale may be found near the project site.

A. Southern Resident Stock

The Southern Residents live in three family groups known as the J, K and L pods. As of July 1, 2013, the stock collectively numbers 82 individuals: J pod has 26 members, K pod has 19 members, and L pod has 37 members (CWR 2013).

Southern Residents are documented in coastal waters ranging from central California to the Queen Charlotte Islands, British Columbia (NMFS 2008). They occur in all inland marine waters. SR killer whales generally spend more time in deeper water and only occasionally enter water less than 15 feet deep (Baird 2000). Distribution is strongly associated with areas of greatest salmon abundance, with heaviest foraging activity occurring over deep open water and in areas characterized by high-relief underwater topography, such as subsurface canyons, seamounts, ridges, and steep slopes (Wiles 2004).

Sightings compiled by the Orca Network from 1990–2013 show that SR killer whale occurs most frequently in the general area of the Tank Farm Pier in the fall and winter, and are far less common from April through September (Osborne 2008; Orca Network 2013). Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No killer whales have been observed within the ZOI during these cruises (ORCA 2013).

Records from 1976 through 2013 document Southern Residents in the inland waters of Washington during the months of March through June and October through December, with the primary area of occurrence in inland waters north of Admiralty Inlet, located in north Puget Sound (Osborne 2008; Orca Network 2013).

Beginning in May or June and through the summer months, all three pods (J, K, and L) of Southern Residents are most often located in the protected inshore waters of Haro Strait (west of San Juan Island), in the Strait of Juan de Fuca, and Georgia Strait near the Fraser River.

Historically, the J pod also occurred intermittently during this time in Puget Sound; however, records from 1997–2007 show that J pod did not enter Puget Sound south of the Strait of Juan de Fuca from approximately June through August (Osborne 2008).

In fall, all three pods occur in areas where migrating salmon are concentrated such as the mouth of the Fraser River. They may also enter areas in Puget Sound where migrating chum and Chinook salmon are concentrated (Osborne 1999). In the winter months, the K and L pods spend progressively less time in inland marine waters and depart for coastal waters in January or February. The J pod is most likely to appear year-round near the San Juan Islands, and in the fall/winter, in the lower Puget Sound and in Georgia Strait at the mouth of the Fraser River.

According to the NMFS National Stranding Database (2007–2013), there were no killer whale strandings in the area of the Tank Farm Pier (NMFS 2013b).

The SR killer whale stock was declared ''depleted/strategic'' under the MMPA in May 2003 (68 FR 31980). On November 18, 2005, the SR stock was listed as ''endangered'' under the ESA (70 FR 69903). On November 29, 2006, NMFS published a final rule designating

critical habitat for the SR killer whale DPS. Both Puget Sound and the San Juan Islands are designated as core areas of critical habitat under the ESA, excluding areas less than 20 feet deep relative to extreme high water are not designated as critical habitat (71 FR 69054). A final recovery plan for Southern Residents was published in January of 2008 (NMFS 2008).

B. West Coast Transient Stock

Transient killer whales generally occur in smaller (less than 10 individuals), less structured pods (NMFS 2013). According to the Center for Whale Research (CWR 2013), they tend to travel in small groups of one to five individuals, staying close to shorelines, often near seal rookeries when pups are being weaned.

The West Coast Transient stock, which includes individuals from California to southeastern Alaska, is estimated to have a minimum number of 354 (NMFS 2012b).

The West Coast Transient stock occurs in California, Oregon, Washington, British Columbia, and southeastern Alaskan waters. Within the inland waters, they may frequent areas near seal rookeries when pups are weaned (Baird and Dill 1995).

Sightings compiled by the Orca Network from 1990–2013 show that transient killer whale occurs most frequently in the general area of the Mukilteo Tank Farm Pier in the spring and summer, and are far less common from September through February (Orca Network 2013). However, transient killer whale occurrence is less predictable than SR killer whale occurrence, and they may be present at any time of the year. Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No killer whales have been observed within the ZOI during these cruises (ORCA 2013).

Gray Whale

The Eastern North Pacific stock of gray whale may be found near the project site. The minimum population estimate of the Eastern North Pacific stock is 18,017 (Carretta *et al.* 2011).

Within Washington waters, gray whale sightings reported to Cascadia Research and the Whale Museum between 1990 and 1993 totaled over 1,100 (Calambokidis *et al.* 1994). Abundance estimates calculated for the small regional area between Oregon and southern Vancouver Island, including the San Juan Area and Puget Sound, suggest there were 137 to 153 individual gray whales from 2001 through 2003 (Calambokidis *et al.* 2004a). Forty-eight individual gray whales were observed in Puget Sound and Hood Canal in 2004 and 2005 (Calambokidis 2007).

Although typically seen during their annual migrations on the outer coast, a regular group of gray whales annually comes into the inland waters at Saratoga Passage and Port Susan (7.5 miles north) from March through May to feed on ghost shrimp (Weitkamp *et al.* 1992). During this time frame they are also seen in the Strait of Juan de Fuca, the San Juan Islands, and areas of Puget Sound, although the observations in Puget Sound are highly variable between years (Calambokidis *et al.* 1994). The average tenure within Washington inland waters is 47 days and the longest stay was 112 days (WSDOT 2013).

Sightings compiled by the Orca Network from 1990–2013 show that gray whales are most frequently in the general area of the Mukilteo Tank Farm Pier from January through May, and are far less common from June through September (Orca Network 2013). Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No gray whales have been observed within the ZOI during these cruises (ORCA 2013).

According to the NMFS National Stranding Database (2007–2013), there were no gray whale strandings in the area of the Tank Farm Pier (NMFS 2013b).

Humpback Whale

The California-Oregon-Washington (CA–OR–WA) stock of humpback whale may be found near the project site. The 2007/2008 estimate of 2,043 humpback whales is the best estimate for abundance for this stock (Carretta *et al.* 2011).

Historically, humpback whales were common in inland waters of Puget Sound and the San Juan Islands (Calambokidis *et al.* 2004b). In the early part of this century, there was a productive commercial hunt for humpbacks in Georgia Strait that was probably responsible for their long disappearance from local waters (Osborne *et al.* 1988). Commercial hunts ended in the 1960's. Since the mid-1990s, sightings in Puget Sound have increased.

This stock calves and mates in coastal Central America and Mexico and migrates up the coast from California to southern British Columbia in the summer and fall to feed (NMFS 1991; Marine Mammal Commission 2003; Carretta *et al.* 2007). Few humpback whales are seen in Puget Sound, but more frequent sightings occur in the Strait of Juan de Fuca and near the San Juan Islands. Most sightings are in spring and summer.

Sightings compiled by the Orca Network from 1990–2013 show that humpback whales are most frequently in the general area of the Tank Farm Pier from April through June, and are far less common from July to March (Orca Network 2013). Since 2007, the Everett Community College ORCA has conducted quarterly cruises that include monitoring stations within the ZOI. No humpback whales have been observed within the ZOI during these cruises (ORCA 2013).

According to the NMFS National Stranding Database (2007–2013), there were no humpback whale strandings in the area of the Tank Farm Pier (NMFS 2013b).

Potential Effects of the Specified Activity on Marine Mammals

WSF and NMFS determined that open-water vibratory pile removal during the during the Mukilteo Tank Farm Pier Removal project has the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the proposed activity.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, hearing impairment could result in the reduced ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that leads to TTS could cause PTS.

As mentioned earlier in this document, under current NMFS guidelines, the received exposure level for Level A harassment is defined at ≥180 dB (rms) re 1 μPa for cetaceans and ≥190 dB (rms) re 1 μPa for pinnipeds. The measured source levels from vibratory removal of 12-inch timber piles are between 149 and 152 dB (rms) re 1 μPa at 16 m from the hammer (Laughlin 2011a). Therefore, the proposed Mukilteo Tank Farm Pier Removal construction project is not

expected to cause Level A harassment or TTS to marine mammals.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the levels of noise from the proposed WSDOT construction activities are relatively low and are blocked by landmass southward. Therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depths near the ferry terminals, underwater sound propagation for low-frequency sound (which is the major noise source from pile driving) is expected to be poor.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with WSDOT construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 120 dB_{rms} re 1 μPa received level for non-impulse noises (such as vibratory pile driving, saw cutting, drilling, and dredging) for the onset of marine mammal Level B behavioral harassment. However, since the ambient noise level at the vicinity of the proposed project area is between 122 to 124 dB re 1 μPa, depending on marine mammal functional hearing groups (Laughlin 2011b), the received level of 120 dB re 1 μPa would be below the ambient level. Therefore, for this proposed project, 122 dB re 1 μPa is used as the threshold for Level B behavioral harassment. The distance to the 122 dB contour Level B acoustical harassment threshold due to vibratory pile removal extends a maximum of 1.6 km (1 mile).

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m (123 ft), and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m (39 ft).

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the project site). The closest documented California sea lion haul out site are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. Disturbance from airborne noise will be limited to those animals moving on the surface through the immediate pier area, within approximately 37 m (123 ft) 12 m (39 ft) of vibratory pile removal.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from vessels) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Further, during the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Water and Sediment Quality

Short-term turbidity is a water quality effect of most in-water work, including pile removal. WSF must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area.

Roni and Weitkamp (1996) monitored water quality parameters during a pier replacement project in Manchester, Washington. The study measured water quality before, during and after pile removal and driving. The study found that construction activity at the site had ''little or no effect on dissolved oxygen, water temperature and salinity'', and turbidity (measured in nephelometric turbidity units [NTU]) at all depths nearest the construction activity was typically less than 1 NTU higher than stations farther from the project area throughout construction.

Similar results were recorded during pile removal operations at two WSF ferry facilities. At the Friday Harbor terminal, localized turbidity levels within the regulatory compliance radius of 150 feet (from three timber pile removal events) were generally less than 0.5 NTU higher than background levels and never exceeded 1 NTU. At the Eagle Harbor maintenance facility, within 150 feet, local turbidity levels (from removal of timber and steel piles) did not exceed 0.2 NTU above background levels (WSF 2012). In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980).

Cetaceans are not expected to be close enough to the Tank Farm Pier to experience turbidity, and any pinnipeds will be transiting the area and could avoid localized turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

Removal of the Tank Farm Pier will result in 3,900 creosote-treated piles (~7,300 tons) removed from the marine environment. This will result in temporary and localized sediment re-suspension of some of the contaminants associated with creosote, such as polycyclic aromatic hydrocarbons.

However, the removal of the creosote-treated wood piles from the marine environment will result in a long-term improvement in water and sediment quality, meeting the goals of WSF's Creosote Removal Initiative started in 2000. The net impact is a benefit to marine organisms, especially toothed whales and pinnipeds that are high on the food chain and bioaccumulate these toxins.

This is especially a concern for long-lived species that spend much of their life in Puget Sound, such as Southern Resident killer whales (NMFS 2008).

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

No subsistence harvest of marine mammals occur in the proposed action area.

Proposed Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Mukilteo Tank Farm Pier removal project, WSF proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. These mitigation measures would be employed during all pile removal activities at the Mukilteo Tank Farm Pier. WSF has informed NMFS that any mitigation measures required by the IHA would be imposed upon contracting parties, through the Contract Plans and Specifications, and contractors.

Since the measured source levels (at 16 m) of the vibratory hammer involved in pile removal are below NMFS current thresholds for Level A takes, i.e., below 180 dB re 1 μPa (rms), no exclusion zone would be established, and there would be no required power-down and shutdown measures. In addition, as mentioned previously, the ambient noise level at the proposed work site is approximately 122 dB re 1 μPa, WSF would establish and monitor a zone of influence (ZOI) where the received level falls to this ambient noise level.

One major mitigation measure for WSDOT's proposed pile removal activities at the Mukilteo Tank Farm Pier is ramping up, or soft start, of vibratory pile hammers. The purpose of this procedure is to reduce the startling behavior of marine mammals in the vicinity of the proposed construction activity from sudden loud noise.

Soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times. Each day, WSF will use the soft-start technique at the beginning of pile removal, or if pile removal has ceased for more than one hour.

To ensure that marine mammal takes will not exceed the authorized levels, monitoring for marine mammal presence will take place 30 minutes before, during and 30 minutes after pile driving to ensure that marine mammals takes will not exceed the authorized levels.

If the number of any allotted marine mammal takes (see Estimated Take by Incidental Harassment section below) reaches the limit under the IHA (if issued), WSDOT would implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

Especially, to ensure that the Level B takes of Southern Resident killer whales (SRKW) does not exceed 5% of its population, shutdown measures will be taken when SRKW approach the ZOI during vibratory pile removal. Pile removal will not resume until the SRKW exit the ZOI.

If killer whale approach the ZOI during vibratory pile removal, and it is unknown whether they are SRKW or transient, it shall be assumed they are SRKW and work will be paused until the whales exit the ZOI.

If SRKW enter the ZOI undetected, up to 4 'unintentional' Level B harassment takes will be allowed. Work will be paused until the SRKW exit the ZOI to avoid further Level B harassment take.

Furthermore, the contractor shall regularly check fuel hoses, oil drums, oil or fuel transfers valves, fittings, etc. for leaks, and shall maintain and store materials properly to prevent spills.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must

include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Proposed Monitoring Measures

The monitoring plan proposed by WSDOT can be found in its IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

(1) Marine Mammal Monitoring Coordination

WSF would conduct briefings with the construction supervisors and the crew, and marine mammal observer(s) prior to the start of pier removal to discuss marine mammal monitoring protocol and requirement to halt work.

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research would be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: the Northwest Fisheries Science Center of NMFS, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottomfish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSF would be able to get real-time information on the presence or absence of whales before starting any pile removal or driving.

(2) Protected Species Observers (PSOs)

WSDOT will employ qualified PSOs to monitor the 120 dB_{rms} re 1 μPa for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be necessary to correctly identify the target.
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI; dates and times when pile removal was paused due to the presence of marine mammals.

(3) Monitoring Protocols

PSOs would be present on site at all times during pile removal. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle would be recorded.

WSF proposes the following methodology to estimate marine mammals that were taken as a result of the proposed Mukilteo Multimodal Tank Farm Pier removal project:

- During vibratory pile removal, two land-based biologists will monitor the area from the best observation points available. If weather conditions prevent adequate land-based observations, boat-based monitoring may be implemented.
- To verify the required monitoring distance, the vibratory Level B behavioral harassment ZOI will be determined by using a range finder or hand-held global positioning system device.
- The vibratory Level B acoustical harassment ZOI will be monitored for the presence of marine mammals 30 minutes before, during, and 30 minutes after any pile removal activity.
- Monitoring will be continuous unless the contractor takes a significant break, in which case, monitoring will be required 30 minutes prior to restarting pile removal.
- If marine mammals are observed, their location within the ZOI, and their reaction (if any) to pile-driving activities will be documented.

NMFS has reviewed the WSF's proposed marine mammal monitoring protocol, and has preliminarily determined the applicant's monitoring program is adequate, particularly as it relates to assessing the level of taking or impacts to affected species. The land-based PSO is expected to be positioned in a location that will maximize his/her ability to detect marine mammals and will also utilize binoculars to improve detection rates.

Proposed Reporting Measures

WSF would provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

Estimated Take by Incidental Harassment

As mentioned earlier in this document, a worst-case scenario for Year One piling removal assumes that it may take 516 hours over 90 days in Year One to remove 1,835 piles. The actual number of hours is expected to be less.

Also, as described earlier, for non-impulse noise, NMFS uses 120 dB re 1 μPa (rms) as the threshold for Level B behavioral harassment. However, the underwater ambient noise measurements conducted at the proposed project site indicate that the nominal noise level is around 122 dB re 1 μPa. Therefore, the distance to the 122 dB (ambient level) contour is used for Level B behavioral harassment. The distance to the 122 dB contour Level B

acoustical harassment threshold due to vibratory pile removal extends a maximum of 1.6 km (1 mile), and determines the ZOI. The ZOI would be monitored during pile removal to estimate actual harassment take of marine mammals.

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m (123 ft), and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m (39 ft).

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the project site. The closest documented California sea lion haul out site are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. In-air disturbance will be limited to those animals moving on the surface through the immediate pier area, within approximately 37 m (123 ft) 12 m (39 ft) of vibratory pile removal.

Incidental take for each species is estimated by determining the likelihood of a marine mammal being present within a ZOI during active pile removal. Expected marine mammal presence is determined by past observations and general abundance near the Tank Farm Pier during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal. As a result, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and observations from Navy biologists.

Based on the estimates, approximately 1,170 Pacific harbor seals, 540 California sea lions, 180 Steller sea lions, 720 harbor porpoises, 270 Dall's porpoises, 39 killer whales (35 transient, 4 Southern Resident killer whales), 70 gray whales, and 28 humpback whales could be exposed to received sound levels above 122 dB re 1 μPa (rms) from the proposed Mukilteo Multimodal Project Tank Farm Pier removal project. A summary of the estimated takes is presented in Table 3.

TABLE 3—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE REMOVAL LEVELS ABOVE 122 DB RE 1 μPA (RMS)

Species	Estimated marine mammal takes	Percentage
Pacific harbor seal	1,170	4.0
California sea lion	540	0.2
Steller sea lion	180	0.3
Harbor porpoise	720	7.0
Dall's porpoise	270	0.6
Killer whale, transient	35	9.8
Killer whale, Southern Resident	4	5.0
Gray whale	70	0.4
Humpback whale	20	1.0

The requested takes represent 4.0% of the Inland Washington stock harbor seals (estimated at 32,000), 0.2% of the U.S. stock California sea lion (estimated at 296,750), 0.3% of the eastern stock Steller sea lion (estimated at 52,847), 7.0% of the Washington Inland Water stock harbor porpoise (estimated at 10,682), 0.6% of the California, Oregon, and Washington stock Dall's porpoise (estimated at 42,000), 9.8% of the West Coast transient killer whale (estimated at 354), 5.0% of Southern Resident killer whale (estimated at 82), 0.4% of the Eastern North Pacific stock gray whale (estimated at 18,017), and 1.0% of the Eastern North Pacific stock humpback whale (estimated at 2,043).

Negligible Impact and Small Numbers Analysis and Preliminary Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSF's proposed Mukilteo Tank Farm Pier removal project would conduct vibratory pile removal activities. Elevated underwater noises are expected to be generated as a result of pile removal. However, noise levels from the machinery and activities are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with WSF construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the proposed construction areas, it is estimated that approximately 1,170 Pacific harbor seals, 540 California sea lions, 180 Steller sea lions, 720 harbor porpoises, 270 Dall's porpoises, 39 killer whales (35 transient, 4 Southern

Resident killer whales), 70 gray whales, and 20 humpback whales could be exposed to received noise levels above 122 dB_{rms} re 1 μPa from the proposed construction work at the Mukilteo Multimodal Ferry Terminal. These numbers represent approximately 0.2%–9.8% of the stocks and populations of these species that could be affected by Level B behavioral harassment. As mentioned earlier in this document, the worst case scenario for the proposed pile removal work would only take a total of 516 hours over 90 days.

In addition, these low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Mukilteo Tank Farm Pier removal project is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. The maximum estimated 122 dB isopleths from vibratory pile driving is approximately 1.6 km from the pile before being blocked by landmass.

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the proposed project area. The closest documented California sea lion haul-out sites are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. However, it is estimated that airborne noise from vibratory pile removal would fall below 90 dB and 100 dB re 1 20 μPa at 37 m and 12 m from the pile, respectively. Therefore, pinnipeds hauled out in the vicinity of the project area will not be affected.

For the reasons discussed in this document, NMFS has preliminarily determined that the vibratory pile removal associated with the Mukilteo Tank Farm Pier Removal Project would result, at worst, in the Level B harassment of small numbers of eight marine mammal species that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the project site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within Washington coastal waters and haul-out sites has led NMFS to preliminarily determine that this action will have a negligible impact on these species in the vicinity of the proposed project area.

In addition, no take by TTS, Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Authorization is valid from September 1, 2014, through August 31, 2015.

2. This Authorization is valid only for activities associated with in-water construction work at the Mukilteo Multimodal Ferry Terminals in the State of Washington.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), transient and Southern Resident killer whales (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) Vibratory pile removal; and

(ii) Work associated with pile removal activities.

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Northwest Regional Administrator (206–526–6150), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or his designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions:

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 3. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation:

(a) Ramp Up (Soft Start):

Vibratory hammer for pile removal and pile driving shall be initiated at reduced power for 15 seconds with a 1 minute interval, and be repeated with this procedure for an additional two times.

(b) Marine Mammal Monitoring:

Monitoring for marine mammal presence shall take place 30 minutes before, during and 30 minutes after pile driving.

(c) Power Down and Shutdown Measures:

(i) WSF shall implement shutdown measures if southern resident killer whales (SRKWs) are sighted within the vicinity of the project area and are approaching the Level B harassment zone (zone of influence, or ZOI) during in-water construction activities.

(ii) If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSF shall implement the shutdown measure identified in 6(c)(i).

(iii) If a SRKW enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the SRKW exits the ZOI to avoid further level B harassment.

(iv) WSF shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA, if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during pile removal activities.

7. Monitoring:

(a) Protected Species Observers: WSF shall employ qualified protected species observers (PSOs) to monitor the 122 dB_{rms} re 1 μPa (nominal ambient level) zone of influence (ZOI) for marine mammals. Qualifications for marine mammal observers include:

(i) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate

target size and distance. Use of binoculars will be required to correctly identify the target.

(ii) Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).

(iii) Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

(iv) Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.

(v) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

(vi) Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal.

(i) During vibratory pile removal, two land-based biologists will monitor the area from the best observation points available. If weather conditions prevent adequate land-based observations, boat-based monitoring shall be implemented.

(ii) The vibratory Level B acoustical harassment ZOI shall be monitored for the presence of marine mammals 30 minutes before, during, and 30 minutes after any pile removal activity.

(iii) Monitoring shall be continuous unless the contractor takes a significant break, in which case, monitoring shall be required 30 minutes prior to restarting pile removal.

(iv) A range finder or hand-held global positioning system device shall be used to ensure that the 122 dB_{rms} re 1 μPa Level B behavioral harassment ZOI is monitored.

(v) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavioral of observed marine mammals;

(D) Location within the ZOI; and

(E) Animals' reaction (if any) to pile-driving activities.

8. Reporting:

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), WSF shall immediately cease all operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) description of the incident;

(iii) status of all sound source use in the 24 hours preceding the incident;

(iv) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility, and water depth);

(v) description of marine mammal observations in the 24 hours preceding the incident;

(vi) species identification or description of the animal(s) involved;

(vii) the fate of the animal(s); and

(viii) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSF may not resume their activities until notified by NMFS via letter, email, or telephone.

(d) In the event that WSF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), WSF will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSF to determine whether modifications in the activities are appropriate.

(e) In the event that WSF discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSF shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinators, within 24 hours of the discovery. WSF shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSF can continue its operations under such a case.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this Authorization and the Incidental Take Statement must be in the possession of each contractor who performs the construction work at Mukilteo Multimodal Ferry Terminals.

11. WSF is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not the issuance of the proposed IHA may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Endangered Species Act (ESA)

The humpback whale and Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSF's proposed construction projects. NMFS' Permits and Conservation Division has initiated

consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to WSF under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to WSF's Mukilteo Tank Farm Pier removal project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 27, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–28905 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC957

Taking of Marine Mammals Incidental to Specified Activities; Bremerton Ferry Terminal Wingwall Replacement Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Washington State Department of Transportation (WSDOT) Ferries Division (WSF) for an authorization to take small numbers of six species of marine mammals, by Level B harassment, incidental to proposed construction activities for the replacement of wingwalls at the Bremerton ferry terminal in Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to WSF to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than January 2, 2014.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application may be obtained by writing to the address specified above or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a 1-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On August 14, 2012, WSF submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of six marine mammal species incidental to construction associated with the replacement of wingwalls at the Bremerton ferry terminal in Washington State. On June 12, 2013, NMFS issued an IHA to WSF for the potential takes of marine mammals as a result of the proposed construction activities (78 FR 36527; June 18, 2013). The IHA covers the duration between September 1, 2013, and August 31, 2014. However, due to a funding shortfall, WSF was unable to conduct the proposed construction activities during the IHA period. Subsequently, on September 30, 2013, WSF submitted another IHA application for the same actions and plans to conduct wingwalls replacement work at the Bremerton Ferry Terminal during fall, 2014. NMFS is proposing to authorize the Level B harassment of the following marine mammal species: harbor seal, California sea lion, Steller sea lion, killer whale, gray whale, and humpback whale.

Description of the Specified Activity

Wingwalls are structures that protect the vehicle transfer span from direct vessel impact and help guide and hold the vessel in position when the ferry is docked. There are two types of wingwalls common at WSF ferry terminals: timber and steel. Timber wingwalls are older structures, typically constructed of creosote treated pilings lashed together by galvanized steel rope, and reinforced as needed with 13″ plastic/steel core piles. The current timber wingwalls at the Bremerton terminal are near the end of their design life, and must be replaced with steel wingwalls to ensure safe and reliable functioning of the terminal.

Steel wingwalls are designed similarly to timber wingwalls in that they contain two rows of plumb piling and one row of batter piling or a third row of plumb piling. A rubber fender between the first and second rows of plumb piling absorbs much of the energy and returns the front row to its original vertical position after an impact. The second row of plumb piling is driven deeper into the sediment and braced with batter piling to minimize movement of the structure. Both pile rows are welded together with horizontal I-beams to which rubbing timbers are attached faced with ultra-high molecular weight (UHMW) plastic, which acts as a rub surface for the ferry. They are designed for a 25-year life span.

The proposed project at the Bremerton Ferry Terminal is to replace the existing Slip 2 timber wingwalls with new standard steel design wingwalls.

Overview of the Planned Activities

The following construction activities are anticipated for the proposed wingwall replacement project:

- Remove two timber wingwalls (112 13-inch timber piles and 100 tons of creosote-treated timber) with a vibratory hammer, direct pull or clamshell removal. Vibratory pile-drive eight 24- and two 30-inch hollow steel piles for each wingwall (20 piles total). Attach rub timbers to new wingwall faces.
- A total of 100 tons of creosote-treated timbers will be removed from the marine environment. The total mudline footprint of the existing wingwalls is 206 square feet (ft^2). The total mudline footprint of the new wingwalls will be 95 ft^2, a reduction of 111 ft^2. The new wingwalls will have 20 piles, compared to the existing wingwalls, which have approximately 112 tightly clustered piles with no space between them. The footprint of the new steel wingwalls will be more open, allowing fish movement between the piles.

Construction Activity Elements

1. Vibratory Hammer Removal

Vibratory hammer extraction is a common method for removing timber piling. A vibratory hammer is a large mechanical device mostly constructed of steel (weighing 5 to 16 tons) that is suspended from a crane by a cable. It is attached to a derrick and positioned on the top of a pile. The pile is then unseated from the sediments by engaging the hammer, creating a vibration that loosens the sediments binding the pile, and then slowly lifting up on the hammer with the aid of the crane.

Once unseated, the crane would continue to raise the hammer and pull the pile from the sediment. When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland. Vibratory removal would take approximately 10 to 15 minutes per pile, depending on sediment conditions.

2. Direct Pull and Clamshell Removal

Older timber pilings are particularly prone to breaking at the mudline because of damage from marine borers and vessel impacts and must be removed because they can interfere with the installation of new pilings. In some cases, removal with a vibratory hammer is not possible if the pile is too fragile to withstand the hammer force. Broken or damaged piles may be removed by wrapping the piles with a cable and pulling them directly from the sediment with a crane. If the piles break below the waterline, the pile stubs would be removed with a clamshell bucket, a hinged steel apparatus that operates like a set of steel jaws. The bucket would be lowered from a crane and the jaws would grasp the pile stub as the crane pulled up. The broken piling and stubs would be loaded onto the barge for off-site disposal. Clamshell removal would be used only if necessary. Direct pull and clamshell removal are not expected to produce noise that could impact marine mammals.

3 Vibratory Hammer Installation

Vibratory hammers are commonly used in steel pile installation where sediments allow and involve the same vibratory hammer used in pile extraction. The pile is placed into position using a choker and crane, and then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy the sediment surrounding the pile allowing the pile to penetrate to the required seating depth. The type of vibratory hammer that will be used for the project will likely be an APE 400 King Kong (or equivalent) with a drive force of 361 tons.

Sound Levels From Proposed Construction Activity

As mentioned earlier, the proposed project includes vibratory removal of 13-inch timber piles, and vibratory driving of 24-inch and 30-inch hollow steel piling.

No source level data is available for 13-inch timber piles. Based on in-water measurements at the WSF Port Townsend Ferry Terminal (Laughlin 2011), removal of 12-inch timber piles generated 149 to 152 dB_{rms} re 1 μPa with an overall average root-mean-square (RMS) value of 150 dB_{rms} re 1 μPa measured at 16 meters. A worst-case noise level for vibratory removal of 13-inch timber piles will be 152 dB_{rms} re 1 μPa at 16 m.

Based on in-water measurements at the WSF Friday Harbor Ferry Terminal, vibratory pile driving of a 24-inch steel pile generated 162 dB_{rms} re 1 μPa measured at 10 meters (Laughlin 2010a).

Based on in-water measurements during a vibratory test pile at the WSF Port Townsend Ferry Terminal, vibratory pile driving of a 30-inch steel pile generated 170 dB_{rms} re 1 μPa (overall average), with the highest measured at 174 dB_{rms} re 1 μPa at 10 meters (Laughlin 2010b). A worst-case noise level for vibratory driving of 30-inch steel piles will be 174 dB_{rms} re 1 μPa at 10 m.

Using practical spreading model to calculate sound propagation loss, Table 1 provides the estimated distances where the received underwater sound levels drop to 120 dB_{rms} re 1 μPa, which is the threshold that is currently used for determining Level B behavioral harassment (see below) from non-impulse noise sources based on measurements of different pile sizes.

TABLE 1—ESTIMATED DISTANCES WHERE VIBRATORY PILE DRIVING RECEIVED SOUND LEVELS DROP TO 120 dB_{rms} RE 1 μPA BASED ON MEASUREMENTS OF DIFFERENT PILE SIZES

Pile size (inch)	Measured source levels	Distance to 120 dB_{rms} re 1 μPa (km)
13	152 dB_{rms} re 1 μPa @ 16 m	2.2
24	162 dB_{rms} re 1 μPa @ 10 m	6.3

TABLE 1—ESTIMATED DISTANCES WHERE VIBRATORY PILE DRIVING RECEIVED SOUND LEVELS DROP TO 120 dB_{rms} RE 1 μPA BASED ON MEASUREMENTS OF DIFFERENT PILE SIZES—Continued

Pile size (inch)	Measured source levels	Distance to 120 dB_{rms} re 1 μPa (km)
30	174 dB_{rms} re 1 μPa @ 10 m	39.8

However, land mass is intersected before the extent of vibratory pile driving is reached, at a maximum of 4.7 km (2.9 miles) at the Bremerton Terminal proposed construction area.

For airborne noise, currently NMFS uses an in-air noise disturbance threshold of 90 dB_{rms} re 20 μPa (unweighted) for harbor seals, and 100 dB_{rms} re 20 μPa (unweighted) for all other pinnipeds. Using the above aforementioned measurement of 97.8 dB_{rms} re 20 μPa @ 50 ft, and attenuating at 6 dBA per doubling distance, in-air noise from vibratory pile removal and driving will attenuate to the 90 dB_{rms} re 20 μPa within approximately 37 m, and the 100 dB_{rms} re 20 μPa within approximately 12 m.

Dates, Duration, and Region of Activity

In-water construction is planned to take place between October 1, 2014, and September 30, 2015.

The number of days it will take to remove and install the pilings largely depends on the condition of the piles being removed and the difficulty in penetrating the substrate during pile installation. Duration estimates of each of the pile driving elements follow:

• The daily construction window for pile removal or driving would begin no sooner than 30 minutes after sunrise to allow for initial marine mammal monitoring, and would end at sunset (or soon after), when visibility decreases to the point that effective marine mammal monitoring is not possible.

• Vibratory pile removal of the existing timber piles would take approximately 10 to 15 minutes per pile. Vibratory removal would take less time than driving, because piles are vibrated to loosen them from the soil, then pulled out with the vibratory hammer turned off. Assuming the worst case of 15 minutes per pile (with no direct pull or clamshell removal), removal of 112 piles would take 28 hours over four days of pile removal (Table 1).

• Vibratory pile driving of the steel piles would take approximately 20 minutes per pile, with three to five piles installed per day. Assuming 20 minutes per pile, and three piles per day, driving of 20 piles would take 6 hours 45 minutes over seven days.

The total worst-case time for pile removal is four days, and seven days for pile installation. The actual number of pile-removal/driving days is expected to be less (Table 2).

TABLE 2—WORST CASE PILE REMOVAL AND DRIVING FOR THE PROPOSED BREMERTON WINGWALLS DOLPHIN REPLACEMENT PROJECT

Removal/Installed	Maximum number of piles	Time	Days
Vibratory pile removal	112	28 hrs.	4
Vibratory pile installation	20	6.75 hrs.	7

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2011), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf.* Refer to that document for information on these species. Specific information concerning these species in the vicinity of the proposed action area is provided below.

Harbor Seal

Harbor seals are members of the true seal family (Phocidae). For management purposes, differences in mean pupping date (Temte 1986), movement patterns (Jeffries 1985; Brown 1988), pollutant loads (Calambokidis *et al.* 1985), and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng 1988). The three distinct stocks are: (1) Inland waters of Washington State (including Hood Canal, Puget Sound, Georgia Basin and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2011).

Pupping seasons vary by geographic region. For the southern Puget Sound region, pups are born from late June through September. After October 1 all pups in the inland waters of Washington are weaned.

Harbor seals, like all pinnipeds, communicate both on land and underwater. Harbor seals have the broadest auditory bandwidth of the pinnipeds, estimated by Southall *et al.* (2007) as between 75 hertz (Hz) and 75 kilohertz (kHz) for ''functional'' in-water hearing and between 75 Hz and 30 kHz for ''functional'' in-air hearing. At lower frequencies (below 1 kHz) sounds must be louder to be heard (Kastak and Schusterman 1998). Studies indicated that pinnipeds are sensitive to a broader range of sound frequencies in-water than in-air (Southall *et al.* 2007). Hearing capabilities for harbor seals in-water are 25 to 30 dB better than in-air (Kastak and Schusterman 1998).

Of the two pinniped species that commonly occur within the region of activity, harbor seals are the most numerous and the only one that breeds in the inland marine waters of Washington (Calambokidis and Baird

1994). In 1999, Jeffries *et al.* (2003) recorded a mean count of 9,550 harbor seals in Washington's inland marine waters, and estimated the total population to be approximately 14,612 animals (including the Strait of Juan de Fuca). The population across Washington increased at an average annual rate of 10 percent between 1991 and 1996 (Jeffries *et al.* 1997) and is thought to be stable (Jeffries *et al.* 2003).

The nearest documented harbor seal haulout site to the Bremerton ferry terminal is 8.5 km north and west (shoreline distance). The number of harbor seals using the haulout is less than 100.

From July 2006 to January 2007, a consultant completed 10 at-sea surveys in preparation for replacement of the WSDOT Manette Bridge, located in Bremerton. Marine mammals were recorded during these surveys: 29 harbor seals were observed in an area approximately the same as the Bremerton wingwalls project ZOI. Seals observed outside of the Bremerton ZOI were subtracted from the total observed (36) during this project. According to the dates on harbor seal observation tags, the most seals seen in any one day is two (given that two tags cover others, the dates may be the same underneath).

From August 2010 to January 2012, marine mammal monitoring was implemented during construction of the Manette Bridge. Counts were conducted only during pile removal/driving days, not every day of the month. Counts were recorded in blocks of working days (not counts per day). The highest number of harbor seals observed was 93 over three days (10/18–20, 2011). The highest number observed during one day was 59 (10/18/2011). It was assumed that these included multiple observations of the same animal by different observers (David Evans & Assoc. Inc. 2011a; 2011b).

Harbor seals are not listed as endangered or threatened under the ESA or as depleted under the MMPA. They are not considered a strategic stock under the MMPA.

California Sea Lion

NMFS recognizes three stocks of California sea lion based on their geographic distribution: (1) The U.S. stock begins at the U.S./Mexico border and extends northward into Canada; (2) the Western Baja California stock extends from the U.S./Mexico border to the southern tip of the Baja California Peninsula; and (3) the Gulf of California stock, which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.* 1992). California sea lions in Washington State belong to the U.S. stock.

The U.S. stock was estimated at 296,750 in the 2011 Stock Assessment Report (SAR) and may be at carrying capacity (Carretta *et al.* 2011). The number of California sea lions in the San Juan Islands and the adjacent Strait of Juan de Fuca totaled fewer than 3,000 in the mid-1980s (Bigg 1985; Gearin *et al.* 1986). In 1994, it was reported that the number of sea lions had stabilized or decreased in some areas (Gearin *et al.* 1988; Calambokidis and Baird 1994). More recently, 3,000 to 5,000 animals are estimated to move into northwest waters (both Washington and British Columbia) during the fall (September) and remain until the late spring (May) when most return to breeding rookeries in California and Mexico (Jeffries *et al.* 2000; WSDOT 2012). Peak counts of over 1,000 animals have been made in Puget Sound (Jeffries *et al.* 2000).

The closest documented California sea lion haulout site to the Bremerton Ferry Terminal is the Puget Sound Naval Shipyard security barrier, located approximately 435 m SW of the ferry terminal. The next closest documented California sea lion haulout sites to the Bremerton Ferry Terminal are navigation buoys and net pens in Rich Passage, approximately nine and ten km east of the terminal, respectively. The number of California sea lions using each haulout is less than 10.

From August 2010 to February 2011, marine mammal monitoring was implemented during construction of the Manette Bridge. Counts were conducted only during pile removal/driving days, not every day of the month. Counts were recorded in blocks of working days (not counts per day). The highest number of California sea lions observed was 21 (September) over six days, an average of 3.5/day (David Evans & Assoc. Inc. 2011a; 2011b).

The Bremerton Puget Sound Naval Shipyard (PSNS) is located to the west of the Bremerton Ferry Terminal. Since November 2010, PSNS personnel have been conducting monthly counts of the number of sea lions that use the security barrier floats as a haulout. As of June 13, 2012, the highest count has been 144 observed during one day in November 2011. All are believed to be California sea lions.

California sea lions do not avoid areas with heavy or frequent human activity, but rather may approach certain areas to investigate. This species typically does not flush from a buoy or haulout if approached.

California sea lions are not listed as endangered or threatened under the ESA or as depleted under the MMPA. They are not considered a strategic stock under the MMPA.

Steller Sea Lion

Steller sea lions comprise two recognized management stocks (eastern and western), separated at 144° W longitude (Loughlin 1997). Only the eastern stock is considered here because the western stock occurs outside of the geographic area of the proposed activity. Breeding rookeries for the eastern stock are located along the California, Oregon, British Columbia, and southeast Alaska coasts, but not along the Washington coast or in inland Washington waters (Angliss and Outlaw 2007). Steller sea lions primarily use haulout sites on the outer coast of Washington and in the Strait of Juan de Fuca along Vancouver Island in British Columbia. Only sub-adults or non-breeding adults may be found in the inland waters of Washington (Pitcher *et al.* 2007).

The eastern stock of Steller sea lions is estimated to be between 58,334 and 72,223 individuals based on 2006 through 2009 pup counts (Allens and Angliss 2011). Washington's estimate including the outer coast is 651 individuals (non-pups only) (Pitcher *et al.* 2007). However, recent estimates are that 1,000 to 2,000 individuals enter the Strait of Juan de Fuca during the fall and winter months (WSDOT 2012).

Steller sea lions in Washington State decline during the summer months, which correspond to the breeding season at Oregon and British Columbia rookeries (approximately late May to early June) and peak during the fall and winter months (Jeffries *et al.* 2000). A few Steller sea lions can be observed year-round in Puget Sound/Georgia Basin although most of the breeding age animals return to rookeries in the spring and summer.

For Washington inland waters, Steller sea lion abundances vary seasonally with a minimum estimate of 1,000 to 2000 individuals present or passing through the Strait of Juan de Fuca in fall and winter months. However, the number of haulout sites has increased in recent years. The nearest documented Steller sea lion haulout site to the Bremerton ferry terminal are the Orchard Rocks in Rich Passage, approximately nine and ten km east of the terminal, respectively (Kitsap Transit 2012).

From July 2006 to January 2007, a consultant completed 10 at-sea surveys in preparation for replacement of the WSDOT Manette Bridge that is located in Bremerton. Marine mammals were recorded during these surveys: no

Stellar sea lions were observed (USDA 2007).

From August 2010 to February 2011, marine mammal monitoring was implemented during construction of the Manette Bridge. No Stellar sea lions were observed (David Evans & Assoc. Inc. 2011).

The Eastern Steller sea lions were listed as threatened under the Endangered Species Act (ESA). On October 23, 2013, NMFS removed the Eastern Steller sea lion from the ESA list as this stock is determined to have been recovered.

Killer Whale

Two sympatric ecotypes of killer whales are found within the proposed activity area: transient and resident. These types vary in diet, distribution, acoustic calls, behavior, morphology, and coloration (Baird 2000; Ford *et al.* 2000). The ranges of transient and resident killer whales overlap; however, little interaction and high reproductive isolation occurs among the two ecotypes (Barrett-Lennard 2000; Barrett-Lennard and Ellis 2001; Hoelzel *et al.* 2002). Resident killer whales are primarily piscivorous, whereas transients primarily feed on marine mammals, especially harbor seals (Baird and Dill 1996). Resident killer whales also tend to occur in larger (10 to 60 individuals), stable family groups known as pods, whereas transients occur in smaller (less than 10 individuals), less structured pods.

One stock of transient killer whale, the West Coast Transient stock, occurs in Washington State. West Coast transients primarily forage on harbor seals (Ford and Ellis 1999), but other species such as porpoises and sea lions are also taken (NMFS 2008a).

Two stocks of resident killer whales occur in Washington State: The Southern Resident and Northern Resident stocks. Southern Residents occur within the activity area, in the Strait of Juan de Fuca, Strait of Georgia, and in coastal waters off Washington and Vancouver Island, British Columbia (Ford *et al.* 2000). Northern Residents occur primarily in inland and coastal British Columbia and Southeast Alaska waters and rarely venture into Washington State waters. Little interaction (Ford *et al.* 2000) or gene flow (Barrett-Lennard 2000; Barrett-Lennard and Ellis 2001; Hoelzel *et al.* 2004) is known to occur between the two resident stocks.

The West Coast Transient stock, which includes individuals from California to southeastern Alaska, was estimated to have a minimum number of 354 (NMFS 2010b). Trends in abundance for the West Coast Transients were unavailable in the most recent stock assessment report (Angliss and Outlaw 2007).

The Southern Resident stock was first recorded in a 1974 census, at which time the population comprised 71 whales. This population peaked at 97 animals in 1996, declined to 79 by 2001 (Center for Whale Research 2011), and then increased to 89 animals by 2006 (Carretta et al. 2007a). As of October 2012, the population collectively numbers 85 individuals: J pod has 25 members, K pod has 20 members, and L pod has 40 members (Whale Museum 2012b).

Both West Coast Transient and the Southern Resident stocks are found within Washington inland waters. Individuals of both forms have long-ranging movements and thus regularly leave the inland waters (Calambokidis and Baird 1994).

The West Coast Transient stock occurs in California, Oregon, Washington, British Columbia, and southeastern Alaskan waters. Within the inland waters, they may frequent areas near seal rookeries when pups are weaned (Baird and Dill 1995).

There are only two reports of Transient killer whale in the Bremerton terminal area. From May 18–19 of 2004, a group of up to 12 individuals entered Sinclair and Dyes Inlet. From May 26–27 of 2010, a group of up to five individuals again entered the same area (Orca Network 2012b).

Southern Residents are documented in coastal waters ranging from central California to the Queen Charlotte Islands, British Columbia (NMFS 2008a). They occur in all inland marine waters within the activity area. While in the activity area, resident killer whales generally spend more time in deeper water and only occasionally enter water less than 15 feet deep (Baird 2000). Distribution is strongly associated with areas of greatest salmon abundance, with heaviest foraging activity occurring over deep open water and in areas characterized by high-relief underwater topography, such as subsurface canyons, seamounts, ridges, and steep slopes (Wiles 2004).

West Coast Transients are documented intermittently year-round in Washington inland waters. Records from 1976 through 2006 document Southern Residents in the inland waters of Washington during the months of March through June and October through December, with the primary area of occurrence in inland waters north of Admiralty Inlet, located in north Puget Sound (The Whale Museum 2008a).

Beginning in May or June and through the summer months, all three pods (J, K, and L) of Southern Residents are most often located in the protected inshore waters of Haro Strait (west of San Juan Island), in the Strait of Juan de Fuca, and Georgia Strait near the Fraser River. Historically, the J pod also occurred intermittently during this time in Puget Sound; however, records from The Whale Museum (2008a) from 1997 through 2007 show that J pod did not enter Puget Sound south of the Strait of Juan de Fuca from approximately June through August.

In fall, all three pods occur in areas where migrating salmon are concentrated such as the mouth of the Fraser River. They may also enter areas in Puget Sound where migrating chum and Chinook salmon are concentrated (Osborne 1999). In the winter months, the K and L pods spend progressively less time in inland marine waters and depart for coastal waters in January or February. The J pod is most likely to appear year-round near the San Juan Islands, and in the fall/winter, in the lower Puget Sound and in Georgia Strait at the mouth of the Fraser River.

Under contract with NMFS, the Friday Harbor Whale Museum keeps a database of verified marine mammal sightings by location quadrants. Whale sightings do not indicate sightings of individual animals. Instead, sightings can be any number of animals. Between 1990 and 2008, in the September to February window proposed for the Bremerton project, an average of 2.9 SR killer whale sightings/month were annually reported for Quad 411 (which encompasses the Bremerton action area) (WSDOT 2012).

Between September 2009 and February 2012, there was one unconfirmed report of a single SR killer whale in the Bremerton action area (January 2009) during the proposed in-water work window for this project (Orca Network 2012b). Based on this information, the possibility of encountering killer whales during the Bremerton project is low to medium, depending on the actual work month.

In one highly unusual 1997 event, 19 L pod individuals entered Sinclair and Dyes Inlet, and remained in Dyes Inlet for 30 days, from October 21 to November 19. As this event unfolded, whale specialists became increasingly concerned that the whale's exit was blocked by shallow water and the need to pass under several bridges, even though they had passed under the same bridges to enter the inlet. After several individuals displayed signs of weight loss, hazing was considered to drive them out of the inlet. However, on day

30 the group exited on their own (Kitsap Sun 2012).

Killer whales are protected under the MMPA of 1972. The West Coast Transient stock is not designated as depleted under the MMPA or listed as ''threatened'' or ''endangered'' under the ESA. The Southern Resident stock is listed as an endangered distinct population segment (DPS) under the ESA. On November 29, 2006, NMFS published a final rule designating critical habitat for the Southern Resident killer whale DPS (71 FR 69054). Both Puget Sound and the San Juan Islands are designated as core areas of critical habitat under the ESA, but areas less than 20 feet deep relative to extreme high water are not designated as critical habitat (71 FR 69054). A final recovery plan for southern residents was published in January of 2008 (NMFS 2008a).

Gray Whale

Gray whales are recorded in Washington waters during feeding migrations between late spring and autumn with occasional sightings during winter months (Calambokidis *et al.* 1994, 2002; Orca Network 2011).

Early in the 20th century, it is believed that commercial hunting for gray whales reduced population numbers to below 2,000 individuals (Calambokidis and Baird 1994). After listing of the species under the ESA in 1970, the number of gray whales increased dramatically resulting in their delisting in 1994. Population surveys since the delisting estimate that the population fluctuates at or just below the carrying capacity of the species (~26,000 individuals) (Rugh *et al.* 1999; Calambokidis *et al.* 1994; Angliss and Outlaw 2007).

Gray whales migrate within 5 to 43 km of the coast of Washington during their annual north/south migrations (Green *et al.* 1995). Gray whales migrate south to Baja California, where they calve in November and December, and then migrate north to Alaska from March through May (Rice *et al.* 1984; Rugh *et al.* 2001) to summer and feed. A very few gray whales are observed in Washington inland waters between the months of September and January, with peak numbers of individuals from March through May. Peak months of gray whale observations in the area of activity occur outside the proposed work window of September through February. The average tenure within Washington inland waters is 47 days, and the longest stay was 112 days.

Although typically seen during their annual migrations on the outer coast, a regular group of gray whales annually comes into the inland waters at Saratoga Passage and Port Susan from March through May to feed on ghost shrimp (Weitkamp *et al.* 1992). During this time frame, they are also seen in the Strait of Juan de Fuca, the San Juan Islands, and areas of Puget Sound, although the observations in Puget Sound are highly variable between years (Calambokidis *et al.* 1994).

Between December 2002 and May 2012, there were three reports of gray whale in the Bremerton area during the proposed in-water work window months for this project: January 8 and 10, 2008 (likely the same individual); November 28–29, 2008; and December 2–6, 2009 (Orca Network 2012b). There were also two reports of gray whale stranding, one on May 3, 2005, at the US Navy Puget Sound Naval Shipyard to the west of the Bremerton terminal (Cascadia 2005), and one on a beach in the Bremerton area on July 27, 2011. Typically, 4–6 gray whales strand every year in Washington State (Cascadia 2011).

The Eastern North Pacific stock of gray whales was removed from listing under the ESA in 1994 after a 5-year review by NOAA Fisheries (Angliss and Outlaw 2007). In 2001, NOAA Fisheries received a petition to relist the stock under the ESA, but it was determined that there was not sufficient information to warrant the petition (Angliss and Outlaw 2007).

Humpback Whale

Humpback whales are wide-ranging baleen whales that can be found virtually worldwide. They summer in temperate and polar waters for feeding, and winter in tropical waters for mating and calving. Humpbacks are vulnerable to whaling due to their tendency to feed in near shore areas. Recent studies have indicated that there are three distinct stocks of humpback whale in the North Pacific: California-Oregon-Washington (formerly Eastern North Pacific), Central North Pacific and Western North Pacific (NMFS 2011e).

The California-Oregon-Washington (CA–OR–WA) stock calve and mate in coastal Central America and Mexico and migrate up the coast from California to southern British Columbia in the summer and fall to feed (NMFS 1991; Marine Mammal Commission 2003; Carretta *et al.* 2011). Although infrequent, interchange between the other two stocks and the Eastern North Pacific stock occurs in breeding areas (Carretta *et al.* 2011). Few Eastern North Pacific stock humpback whales are seen in Puget Sound, but more frequent sightings occur in the Strait of Juan de Fuca and near the San Juan Islands. Most sightings are in spring and summer. Humpback whales feed on krill, small shrimp-like crustaceans and various kinds of small fish.

The 2007/2008 estimate of 2,043 humpback whales is the best estimate for abundance for this stock, though it does exclude some whales in Washington (Calambokidis *et al.* 2009).

Historically, humpback whales were common in inland waters of Puget Sound and the San Juan Islands (Calambokidis *et al.* 2002). In the early part of this century, there was a productive commercial hunt for humpbacks in Georgia Strait that was probably responsible for their long disappearance from local waters (Osborne *et al.* 1988). Since the mid-1990s, sightings in Puget Sound have increased. Between 1996 and 2001, Calambokidis *et al.* (2002) recorded only six individuals south of Admiralty Inlet (northern Puget Sound).

Between September 2003 and February 2012, there was one unconfirmed report (February 24, 2012) of humpback whale in the Bremerton action area (Orca Network 2012).

Humpback whales are listed as ''endangered'' under the ESA, and consequently the stock is automatically considered a depleted stock under the MMPA.

Potential Effects of the Specified Activity on Marine Mammals

WSF and NMFS determined that open-water pile driving and pile removal associated with the construction activities at Bremerton Ferry Terminal has the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the proposed activity.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, hearing impairment could result in the reduced ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that leads to TTS could cause PTS.

Experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale

(*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Current NMFS acoustic thresholds that identify the received sound levels above which permanent hearing impairment (permanent threshold shift, PTS) or other injury could potentially occur are 180 and 190 dB re 1 μPa (rms) for cetaceans and pinnipeds, respectively. The established 180- and 190-dB re 1 μPa (rms) criteria are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before direct data on temporary threshold shift (TTS) (from which PTS is primarily extrapolated) for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. For the proposed wingwall replacement work at the Bremerton Ferry Terminal, only vibratory pile driving would be used. Noise levels measured near the source of vibratory hammers (10 m and 16 m from the source, see above) are much lower than the 180 dB re 1 μPa (rms) threshold currently used by NMFS. Therefore, it is very unlikely that any marine mammals would experience TTS or PTS as a result of noise exposure to WSF's proposed construction activities at Bremerton Ferry Terminal.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed WSF construction activities is confined in an area that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depths near the ferry terminals, underwater sound propagation for low-frequency sound (which is the major noise source from pile driving) is expected to be poor.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography), and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with WSF construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 120 dB_{rms} re 1 μPa received level for non-impulse noises (such as vibratory pile driving, saw cutting, drilling, and dredging) for the onset of marine mammal Level B behavioral harassment.

As far as airborne noise is concerned, the estimated in-air source level from vibratory pile driving a 30-in steel pile is estimated at 97.8 dB re 1 μPa at 15 m (50 feet) from the pile (Laughlin 2010b). Using the spreading loss of 6 dB per doubling of distance, it is estimated that the distances to the 90 dB and 100 dB thresholds were estimated at 37 m and 12 m, respectively.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential

impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from vessels) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Further, during the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Water and Sediment Quality

Short-term turbidity is a water quality effect of most in-water work, pile removal and driving. WSF must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area.

Roni and Weitkamp (1996) monitored water quality parameters during a pier replacement project in Manchester, WA. The study measured water quality before, during and after pile removal and driving. The study found that construction activity at the site had ''little or no effect on dissolved oxygen, water temperature and salinity,'' and turbidity (measured in nephelometric turbidity units [NTU]) at all depths nearest the construction activity was typically less than 1 NTU higher than stations farther from the project area throughout construction.

Similar results were recorded during pile removal operations at two WSF ferry facilities. At the Friday Harbor terminal, localized turbidity levels (from three timber pile removal events) were generally less than 0.5 NTU higher than background levels and never exceeded 1 NTU. At the Eagle Harbor maintenance facility, local turbidity levels (from removal of timber and steel piles) did not exceed 0.2 NTU above background levels. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980).

Cetaceans are not expected to be close enough to the Bremerton ferry terminal to experience effects of turbidity, and any pinnipeds will be transiting the terminal area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

Removal of the timber wingwalls at the Bremerton ferry terminal will result in 112 creosote-treated piles (100 tons) removed from the marine environment. This will result in the potential, temporary and localized sediment re-suspension of some of the contaminants associated with creosote, such as polycyclic aromatic hydrocarbons. However, the actual removal of the creosote-treated wood piles from the marine environment will result in a long-term improvement in water and sediment quality. The net impact is a benefit to marine organisms, especially toothed whales and pinnipeds that are high in the food chain and bioaccumulate these toxins. This is especially a concern for long-lived species that spend their entire life in Puget Sound, such as Southern Resident killer whales (NMFS 2008a).

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

No subsistence harvest of marine mammals occur in the proposed action area.

Proposed Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Bremerton Ferry Terminal wingwall replacement project, WSF proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. These mitigation measures would be employed during all pile removal and installation activities at the Bremerton Ferry Terminal. WSF has informed NMFS that any monitoring measures required by the IHA would be imposed upon contracting parties, through the Contract Plans and Specifications, and contractors.

Since the measured source levels of the vibratory hammer involved in pile removal and pile driving are below NMFS current thresholds for Level A takes, i.e., below 180 dB re 1 μPa (rms), no exclusion zone would be established, and there would be no required power-down and shutdown measures. Instead, WSF would establish and monitor the 120 dB re 1 μPa (rms) zone of influence (ZOI, see below Proposed Monitoring and Reporting section).

One major mitigation measure for WSF's proposed pile removal and pile driving activities is ramping up, or soft start, of vibratory pile hammers. The purpose of this procedure is to reduce the startling behavior of marine mammals in the vicinity of the proposed construction activity from sudden loud noise.

Soft start requires contractors to initiate the vibratory hammer at reduced power for 15 seconds with a 1 minute interval, and repeat such procedures for an additional two times.

To ensure that marine mammal takes will not exceed the authorized levels, monitoring for marine mammal presence will take place 30 minutes before, during and 30 minutes after pile driving and removal to ensure that marine mammals takes will not exceed the authorized levels.

If the number of any allotted marine mammal takes (see Estimated Take by Incidental Harassment section below) reaches the limit under the IHA (if issued), WSF would implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

Especially, to ensure that the Level B takes of Southern Resident killer whales (SRKW) does not exceed 5% of its population, shutdown measures will be taken when SRKW approach the ZOI during vibratory pile removal. Pile driving and removal will not resume until the SRKW exit the ZOI.

If killer whale approach the ZOI during vibratory pile driving and/or removal, and it is unknown whether they are SRKW or transient, it shall be assumed they are SRKW and work will be paused until the whales exit the ZOI.

If SRKW enter the ZOI undetected, up to 4 'unintentional' Level B harassment takes will be allowed. Work will be paused until the SRKW exit the ZOI to avoid further Level B harassment take.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Proposed Monitoring Measures

The monitoring plan proposed by WSF can be found in its IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

(1) Marine Mammal Monitoring Coordination

WSF would conduct briefings between the construction supervisors and the crew and protected species observers (PSOs) prior to the start of pile-driving activity, marine mammal monitoring protocol and operational procedures.

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research would be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of more than 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: the NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sighting information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study killer whale communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSF will be able to get real-time information on the presence or absence of whales before starting any pile removal or driving.

(2) Protected Species Observers (PSOs)

WSF will employ qualified PSOs to monitor the 120 dB_{rms} re 1 μPa for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be necessary to correctly identify the target.
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(3) Monitoring Protocols

PSOs would be present on site at all times during pile removal and driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle would be recorded.

WSF proposes the following methodology to estimate marine mammals that were taken as a result of the proposed Bremerton Ferry Terminal construction work:

- A range finder or hand-held global positioning system device would be used to ensure that the 120 dB_{rms} re 1 μPa Level B behavioral harassment ZOI is monitored.
- The vibratory Level B acoustical harassment ZOI would be monitored for the presence of marine mammals 30 minutes before, during, and 30 minutes after any pile removal or driving activity.
- Monitoring would be continuous unless the contractor takes a significant break—then the 30 minutes before, during, and 30 minutes after monitoring sequence will begin again.
- If marine mammals are observed, the following information will be documented:
  - Species of observed marine mammals;
  - Number of observed marine mammal individuals;
  - Behavioral of observed marine mammals;
  - Location within the ZOI; and
  - Animals' reaction (if any) to pile-driving activities.
- During vibratory pile removal and driving, one land-based biologist would monitor the area from the terminal work site, and one monitor will move among a number of access points along the southern Sinclair Inlet shore. Binoculars shall be used during marine mammal monitoring.

NMFS has reviewed the WSF's proposed marine mammal monitoring protocol, and has determined the applicant's monitoring program is adequate, particularly as it relates to assessing the level of taking or impacts to affected species. The land-based PSO is expected to be positioned in a location that will maximize his/her ability to detect marine mammals and will also utilize binoculars to improve detection rates. In addition, the boat-based PSO will cruise within the 120 dB ZOI, which is not a particularly large zone, thereby allowing him/her to conduct additional monitoring with binoculars. With respect to WSF's take limits, NMFS is primarily concerned that WSF could reach its Southern Resident killer whale limit. However, killer whales have large dorsal fins and can be easily spotted from great distances. Further, Southern Resident

killer whales typically move in groups, which makes visual detection much easier. In addition, added underwater acoustic monitoring by Orca Network in the region would further provide additional detection, since resident killer whales are very vocal.

Proposed Reporting Measures

WSF would provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

Estimated Take by Incidental Harassment

As mentioned earlier in this document, a worst-case scenario for the Bremerton Ferry Terminal project assumes that it may take four days to remove the existing piles and seven days to install the new piles. The maximum total number of hours of pile removal activity is about 28 hours, and pile-driving activity is about 6.75 hours (averaging about 3.2 hours of active pile removal/driving for each construction day). The actual number of hours for both projects is expected to be less.

Also, as described earlier, for non-impulse noise, NMFS uses 120 dB re 1 μPa (rms) as the threshold for Level B behavioral harassment. The distance to the 120 dB contour Level B acoustical harassment threshold due to vibratory pile driving for the Bremerton ferry terminal project extends a maximum of 4.7 km (2.9 miles) before land is intersected. The ZOI would be monitored during construction to estimate actual harassment take of marine mammals.

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m, and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m.

The nearest known harbor seal haulout site to the Bremerton ferry terminal is 8.5 km north and west (shoreline distance). The nearest documented California and Steller sea lion haulout sites to the Bremerton ferry terminal are navigation buoys in Rich Passage, approximately 9 and 10 km east of the terminal. The Puget Sound Naval Shipyard security barrier California sea lion haulout is located approximately 435 m SW of the ferry terminal.

In-air noise from this project will not reach to haulout sites, but harbor seals swimming on the surface through the 37 m zone, and other pinnipeds swimming on the surface through the 12 m zone during vibratory pile removal or driving may be temporarily disturbed.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the Bremerton Ferry Terminal during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal. As a result, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and Federal agencies, and observations from Navy biologists.

Based on the estimates, approximately 649 Pacific harbor seals, 1,841 California sea lions, 66 Steller sea lions, 28 killer whales (24 transient, 4 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received sound levels above 120 dB re 1 μPa (rms) from the proposed Bremerton Ferry Terminal wingwall dolphin replacement work. A summary of the estimated takes is presented in Table 3.

TABLE 3—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE DRIVING AND PILE REMOVAL LEVELS ABOVE 120 dB RE 1 μPA (RMS)

Species	Estimated marine mammal takes	Percentage
Pacific harbor seal	649	2.02
California sea lion	1,841	0.53
Steller sea lion	66	0.11
Killer whale, transient	24	6.8
Killer whale, Southern Resident	4	5.0
Gray whale	8	0.04
Humpback whale	8	0.39

Negligible Impact and Small Numbers Analysis and Preliminary Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes,

the number of estimated mortalities, and effects on habitat.

The WSF's proposed Bremerton Ferry Terminal construction project would conduct vibratory pile removal and pile driving to replace wingwall structures. Elevated underwater noises are expected to be generated as a result of pile removal and pile driving activities. However, noise levels from the machinery and activities are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with WSF construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the proposed construction areas, it is estimated that approximately 649 Pacific harbor seals, 1,841 California sea lions, 66 Steller sea lions, 28 killer whales (24 transient, 4 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received noise levels above 120 dB_{rms} re 1 μPa from the proposed construction work at the Bremerton Ferry Terminal. These numbers represent approximately 0.04%–6.8% of the stocks and populations of these species could be affected by Level B behavioral harassment. As mentioned earlier in this document, the worst case scenario for the proposed construction work would only take a total of 34.75 hours (28 hours for pile removal and 6.75 hours for pile driving).

In addition, these low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. In addition, no important feeding and/or reproductive areas of marine mammals is known to be near the proposed action area. Therefore, the take resulting from the proposed Bremerton Ferry Terminal construction projects is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. The maximum estimated 120 dB isopleths from vibratory pile driving is approximately 4.7 km at from the pile before being blocked by landmass.

The closest documented California sea lion haulout site to the Bremerton Ferry Terminal is the Puget Sound Naval Shipyard security barrier, located approximately 435 m SW of the ferry terminal. The next closest documented California sea lion haulout sites to the Bremerton Ferry Terminal are navigation buoys and net pens in Rich Passage, approximately nine and ten km east of the terminal, respectively. However, it is estimated that airborne noise from vibratory pile driving a 30-in steel pile would fall below 90 dB and 100 dB re 1 20 μPa at 37 m and 12 m from the pile, respectively. Therefore, pinnipeds hauled out at the Puget Sound Naval Shipyard security barrier will not be affected.

For the reasons discussed in this document, NMFS has preliminarily determined that the impact of vibratory pile removal and pile driving associated with wingwall replacements at Bremerton Ferry Terminal would result, at worst, in the Level B harassment of small numbers of six marine mammals that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within Washington coastal waters and haul-out sites has led NMFS to preliminarily determine that this action will have a negligible impact on these species in the vicinity of the proposed construction area.

In addition, no take by TTS, Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Authorization is valid from October 1, 2014, through September 30, 2015.

2. This Authorization is valid only for activities associated in-water construction work at the Bremerton Ferry Terminals in the State of Washington.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), transient and Southern Resident killer whales (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) Vibratory pile removal; and

(ii) Vibratory pile driving.

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Northwest Regional Administrator (206–526–6150), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or his designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 3. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation

(a) Ramp Up (Soft Start):

Vibratory hammer for pile removal and pile driving shall be initiated at reduced power for 15 seconds with a 1 minute interval, and be repeated with this procedure for an additional two times.

(b) Marine Mammal Monitoring:

Monitoring for marine mammal presence shall take place 30 minutes before, during and 30 minutes after pile driving.

(c) Power Down and Shutdown Measures

(i) WSF shall implement shutdown measures if southern resident killer whales (SRKWs) are sighted within the vicinity of the project area and are approaching the Level B harassment zone (zone of influence, or ZOI) during in-water construction activities.

(ii) If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSF shall

implement the shutdown measure identified in 6(c)(i).

(iii) If a SRKW enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the SRKW exits the ZOI to avoid further level B harassment.

(iv) WSF shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA, if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during pile removal activities.

7. Monitoring:

(a) Protected Species Observers: WSF shall employ qualified protected species observers (PSOs) to monitor the 120 dB_{rms} re 1 μPa zone of influence (ZOI) for marine mammals. Qualifications for marine mammal observers include:

(i) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be required to correctly identify the target.

(ii) Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).

(iii) Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

(iv) Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.

(v) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

(vi) Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

(i) A range finder or hand-held global positioning system device will be used to ensure that the 120 dB_{rms} re 1 μPa Level B behavioral harassment ZOI is monitored.

(ii) A 20-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(iii) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavioral of observed marine mammals;

(D) Location within the ZOI; and

(E) Animals' reaction (if any) to pile-driving activities.

(iv) During vibratory pile removal and driving, one land-based biologist would monitor the area from the terminal work site, and one monitor will move among a number of access points along the southern Sinclair Inlet shore. Binoculars shall be used during marine mammal monitoring.

(v) WSF shall contact the Orca Network and/or Center for Whale Research to find out the location of the nearest marine mammal sightings.

(vi) WSF shall also utilize marine mammal occurrence information collected by the Orca Network using hydrophone systems to maximize marine mammal detection in the project vicinity.

8. Reporting:

(a) WSF shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this Authorization and the Incidental Take Statement must be in the possession of each contractor who performs the construction work at the Bremerton Ferry Terminals.

11. WSF is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not the issuance of the proposed IHA may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Endangered Species Act (ESA)

The humpback whale and the Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSF's proposed construction projects. NMFS' Permits and Conservation Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to WSF under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to WSF's Bremerton Ferry Terminal construction projects, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 27, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–28893 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority Board Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Open Public Meeting of the First Responder Network Authority.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will convene open public meetings of the Board Committees on December 16, 2013.

DATES: The meeting will be held on December 16, 2013 between 2:00 p.m. and 5:00 p.m. Mountain Standard Time. There will be sequential meetings of FirstNet's four committees: (1) Governance and Personnel Committee; (2) Finance, Audit and Budget Committee; (3) Planning and Technology Committee; and (4) Outreach Committee.

ADDRESSES: FirstNet's committee members will meet in Grand Ballroom 1 of the DoubleTree by Hilton Denver, 3203 Quebec Street, Denver, Colorado 80207.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230: telephone (202) 482–0016; email *uzoma@firstnet.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION: This notice informs the public that four Board committees of the FirstNet Board are scheduled to meet on December 16, 2013, in Denver, Colorado.

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created the First Responder Network Authority (FirstNet) as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to establish a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters To Be Considered: NTIA will post a detailed agenda for each committee meeting on its Web site, *http://www.ntia.doc.gov,* prior to December 16, 2013. The agenda topics are subject to change. The committees may, by a majority vote, close a portion of their meetings as necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. *See* 47 U.S.C. 1424(e)(2).

Time and Date: The meetings of the Governance and Personnel Committee, the Finance, Audit and Budget Committee, the Planning and Technology Committee and the Outreach Committee will be held on December 16, 2013, from 2:00 p.m. to 5:00 p.m. Mountain Standard Time. The times are subject to change.

Place: Board members will meet in Grand Ballroom 1 of the DoubleTree by Hilton Denver, 3203 Quebec Street, Denver, Colorado 80207. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/category/firstnet* for the most current information.

Other Information: These meetings are open to the public and press. Given the space limitations of the meeting room, members of the public wishing to attend the meetings in person will be directed to Crystal Ballroom 1 of the DoubleTree by Hilton Denver, 3203 Quebec Street, Denver, Colorado 80207, where they can observe the meetings by video. The meetings are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Uzoma Onyeije, Secretary, FirstNet, at (202) 482–0016 or *uzoma@firstnet.gov* at least five (5) business days before the meeting.

The meetings will also be webcast. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/category/firstnet* for webcast instructions and other information. If you have technical questions regarding the webcast, please contact Charles Franz at *cfranz@ntia.doc.gov.*

Records: NTIA maintains records of all Board proceedings. Board minutes will be available at *http://www.ntia.doc.gov/category/firstnet.*

Dated: November 27, 2013.

Milton Brown,

Deputy Chief Counsel.

[FR Doc. 2013–28935 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority Board Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Open Public Meeting of the First Responder Network Authority.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will convene an open public meeting on December 17, 2013.

DATES: The Board meeting will be held on December 17, 2013, from 9:00 a.m. to 12:00 p.m., Mountain Standard Time.

ADDRESSES: The meeting will be held in Grand Ballroom 1 of the DoubleTree by Hilton Denver, 3203 Quebec Street, Denver, Colorado 80207.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230: Telephone (202) 482–0016; email *uzoma@firstnet.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION: This notice informs the public that the FirstNet Board has scheduled a meeting on December 17, 2013, in Denver, Colorado.[1]

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created the First Responder Network Authority (FirstNet) as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to establish a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters to Be Considered: NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting on December 17. The agenda topics are subject to change. The Board may, by a majority vote, close a portion of the meeting as necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. *See* 47 U.S.C. 1424(e)(2).

[1] On November 9, 2012, NTIA published a notice in the **Federal Register** noting that a public meeting of the FirstNet Board would be held on December 17, 2013, in Boulder, Colorado, and that NTIA would publish a future notice for this meeting. 77 FR 67342 (Nov. 9, 2012). This notice provides an update to the date, time, and location information for the Board's December 17, 2013 meeting.

Time and Date: The Board meeting will be held on December 17, 2013, from 9:00 a.m. to 12:00 p.m. Mountain Standard Time. The times are subject to change.

Place: Board members will meet in Grand Ballroom 1 of the DoubleTree by Hilton Denver, 3203 Quebec Street, Denver, Colorado 80207. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/category/firstnet* for the most current information.

Other Information: This meeting is open to the public and press. Given the space limitations of the meeting room, members of the public wishing to attend the meetings in person will be directed to Crystal Ballroom 1 of the DoubleTree by Hilton Denver, 3203 Quebec Street, Denver, Colorado 80207, where they can observe the meetings by video. The meetings are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Uzoma Onyeije, Secretary, FirstNet, at (202) 482–0016 or *uzoma@firstnet.gov* at least five (5) business days before the meeting.

The meeting will also be webcast. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/category/firstnet http://www.ntia.doc.gov/firstnet-public-meetings* for webcast instructions and other information. If you have technical questions regarding the webcast, please contact Charles Franz at *cfranz@ntia.doc.gov.*

Records: NTIA maintains records of all Board proceedings. Board minutes will be available at *http://www.ntia.doc.gov/category/firstnet.*

Dated: November 27, 2013.

Milton Brown,

Deputy Chief Counsel.

[FR Doc. 2013–28936 Filed 12–2–13; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13728–002]

Goodwin Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 8, 2013, Goodwin Power, LLC filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility proposing to study the feasibility of the Goodwin Dam Project, located on the Stanislaus River in Tuolumne and Calaveras counties, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located at the existing Goodwin Dam [1] and would harness water that currently flows over the spillway of the Goodwin Dam. The proposed project would consist of: (1) A 15-foot-wide by 7-foot-high siphon intake and guard; (2) four 150-foot-long, 48 inch diameter penstocks; (3) four inline turbines and associated generators, each having an installed capacity of 1.24 megawatts; (4) four 48-inch-wide draft tube tunnels; (5) a 33-foot-long by 25-foot-wide concrete foundation; (6) a 50-foot-long by 20-foot-wide tailrace canal extending from the powerhouse to the river bed; (7) a new switchyard and 400-foot-long, 17 kV transmission overhead line or a buried cable connecting to PG&E´s transmission lines at Goodwin Dam; and (8) appurtenant facilities.

Applicant Contact: Magnús Jóhannesson, America Renewables, LLC; 46–E Peninsula Center, Palos Verdes Estates, CA 90274; *mj@americarenewables.com.*

FERC Contact: Jennifer Adams, (202) 502–8087; j*ennifer.adams@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13728) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28899 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

[1] The existing Goodwin Dam is owned by the Oakdale Irrigation District and San Joaquin Irrigation District.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–21–000]

Florida Gas Transmission Company, LLC; Notice of Application

Take notice that on November 15, 2013, Florida Gas Transmission Company, LLC (FGT), 1300 Main Street, Houston, Texas 77002, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for the Pompano Compressor Station 21.5 Project. Specifically, FGT proposes to construct and operate one new electric 22,000 horsepower compressor station, extend its mainline piping, construct a new regulator station, and install appurtenances, all located in Broward County, Florida. FGT states that the proposed project will increase the maximum delivery quantity by 25,000 million British thermal units per day to Florida Power & Light Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Stephen Veatch, Senior Director of Certificates &

Reporting, Florida Gas Transmission Company, LLC, 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2024, by facsimile at (713) 989–1205, or by email at *stephen.veatch@energytransfer.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: December 17, 2013.

Dated: November 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28897 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–32–000.
Applicants: Noble Americas Gas & Power Corp., Eagle Point Power Generation LLC.
Description: Application for approval Pursuant to Section 203 of the Federal Power Act, request for expedited consideration and request for privileged treatment re Noble Americas Gas & Power Corp et al.
Filed Date: 11/19/13.
Accession Number: 20131120–0001.
Comments Due: 5 p.m. ET 12/10/13

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1674–003.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc's Amendment to the July 2, 2013 Updated Market Power Analysis.
Filed Date: 11/20/13.
Accession Number: 20131120–5153.
Comments Due: 5 p.m. ET 12/11/13.

Docket Numbers: ER11–1858–002; ER11–1859–001.
Applicants: NorthWestern Corporation.
Description: Supplement to July 1, 2013 NorthWestern Corporation, et. al.'s updated market power screen analysis for wholesale electricity markets in the Northwest Region.
Filed Date: 11/20/13.
Accession Number: 20131120–5027.
Comments Due: 5 p.m. ET 12/11/13.

Docket Numbers: ER11–3697–005.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits ETC Refund Report to be effective N/A.
Filed Date: 11/21/13.
Accession Number: 20131121–5003.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–16–000.
Applicants: Burgess Biopower LLC.
Description: Errata to October 2, 2013 Burgess Biopower LLC tariff filing.
Filed Date: 11/7/13.
Accession Number: 20131107–5123.
Comments Due: 5 p.m. ET 12/5/13.

Docket Numbers: ER14–437–000.
Applicants: Puget Sound Energy, Inc.
Description: Reassignment Tariff Revisions to be effective 6/30/2013.

Filed Date: 11/20/13.
Accession Number: 20131120–5082.
Comments Due: 5 p.m. ET 12/11/13.

Docket Numbers: ER14–438–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits 2198R13 Kansas Power Pool NITSA and NOA to be effective 11/1/2013.
Filed Date: 11/20/13.
Accession Number: 20131120–5102.
Comments Due: 5 p.m. ET 12/11/13.

Docket Numbers: ER14–439–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of Original Service Agreement No. 3343; Queue No. X1–005 to be effective 11/18/2013.
Filed Date: 11/20/13.
Accession Number: 20131120–5127.
Comments Due: 5 p.m. ET 12/11/13.

Docket Numbers: ER14–440–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits Fully Executed GIA and Distribution Service Agmt with Rhodia Inc to be effective 11/22/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5001.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–441–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits SGIA and Distribution Service Agreement with SEPV Palmdale East, LLC to be effective 11/22/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5002.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–442–000.
Applicants: Brookfield Energy Marketing LP.
Description: Petition of Brookfield Energy Marketing LP for Limited Waiver.
Filed Date: 11/21/13.
Accession Number: 20131121–5047.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–443–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: GIAs and Distribution Service Agmts with Kona Solar LLC to be effective 11/22/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5094.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–444–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: New York Independent System Operator, Inc. submits Cost Reimbursement Agreement No. 2056 Between NYSEG and Niagara Mohawk to be effective 10/1/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5138.
Comments Due: 5 p.m. ET 12/12/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–11–000.
Applicants: Southern Power Company.
Description: Application of Southern Power Company for authorization to issue securities under Section 204 of the Federal Power Act and request for exemption from competitive bidding requirements.
Filed Date: 11/21/13.
Accession Number: 20131121–5118.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ES14–12–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc. Under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 11/21/13.
Accession Number: 20131121–5120.
Comments Due: 5 p.m. ET 12/12/13.

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: November 21, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28798 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–288–002.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits Att Y Ministerial Corrections to be effective 12/1/2012.
Filed Date: 11/22/13.
Accession Number: 20131122–5113.
Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER13–2109–001.
Applicants: Fowler Ridge Wind Farm LLC.
Description: Fowler Ridge Wind Farm LLC submits Compliance Filing—Amdmt to New Baseline Filing to be effective 8/5/2013.
Filed Date: 11/22/13.
Accession Number: 20131122–5067.
Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER13–2470–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits APS MBR Tariff Authoiry to Add Clarification For Operating Reserves Sales to be effective 11/27/2013.
Filed Date: 11/22/13.
Accession Number: 20131122–5116.
Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–152–000; ER14–153–000; ER14–154–000.
Applicants: Elgin Energy Center, LLC, Gibson City Energy Center, LLC, Grand Tower Energy Center, LLC.
Description: Supplement to October 22, 2013 Elgin Energy Center, LLC et. al.
Filed Date: 11/22/13.
Accession Number: 20131122–5097.
Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–221–000.
Applicants: Covanta Haverhill Associates, LP.
Description: Covanta Haverhill Associates, LP submits the Second Supplement to October 29, 2013 tariff filing.
Filed Date: 11/21/13.
Accession Number: 20131121–5224.
Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–423–001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits Engineering & Procurement–Macksburg–Amendment to be effective 11/18/2013.
Filed Date: 11/22/13.
Accession Number: 20131122–5109.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–425–003.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–19–2013 Agreements Re-Collation Part 2A to be effective 12/20/2013.

Filed Date: 11/21/13.

Accession Number: 20131121–5232.

Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–425–004.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–19–2013 Agreements Re-Collation Part 2B to be effective 11/20/2013.

Filed Date: 11/21/13.

Accession Number: 20131121–5209.

Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–445–000.

Applicants: AEP Texas Central Company.

Description: TCC-Los Vientos Windpower III System Upgrade Agreement to be effective 10/28/2013.

Filed Date: 11/21/13.

Accession Number: 20131121–5162.

Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–446–000.

Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.

Description: ComEd files PJM SA 3672 among ComEd and Ameren to be effective 11/21/2013.

Filed Date: 11/21/13.

Accession Number: 20131121–5202.

Comments Due: 5 p.m. ET 12/12/13.

Docket Numbers: ER14–447–000.

Applicants: Ameren Illinois Company.

Description: Ameren Illinois Company submits Revision to WVPA Meter Replacement Letter Agreement RS 141 to be effective 10/23/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5101.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–448–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits 607R20 Westar Energy, Inc. NITSA and NOA to be effective 11/1/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5111.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–449–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Notice of Cancellation of LGIA with SES Solar One, LLC to be effective 9/1/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5112.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–450–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits 1765R8 KCP&L–GMO NITSA and two NOAs to be effective 11/1/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5115.

Comments Due: 5 p.m. ET 12/13/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–7–000.

Applicants: Commonwealth Edison Company.

Description: Supplement to October 28, 2013 Application of Commonwealth Edison Company under Section 204 of the Federal Power Act for the Authority to Issue Securities.

Filed Date: 11/21/13.

Accession Number: 20131121–5226.

Comments Due: 5 p.m. ET 12/2/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR13–9–001.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 23 of November 1, 2013 Commission Order.

Filed Date: 11/22/13.

Accession Number: 20131122–5051.

Comments Due: 5 p.m. ET 12/6/13.

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: November 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28802 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–528–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed West Leg 2014 Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the West Leg 2014 Expansion Project, proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to construct, operate, and maintain new natural gas facilities in Dakota and Dodge Counties, Nebraska and Woodbury County, Iowa to provide for 88,430 dekatherms per day (Dth/d) to serve increased markets for industrial, commercial, and residential uses.

The EA assesses the potential environmental effects of the construction and operation of the West Leg 2014 Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corp of Engineers, U.S. Department of Agriculture Natural Resources Conservation Service, Iowa Department of Natural Resources, Nebraska Game and Parks Commission, and the Papio-Missouri River Natural Resources District participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed project includes the following facilities:

- Approximately 7 miles of 20- and 24-inch-diameter pipeline in Dakota County, Nebraska and Woodbury County, Iowa;
- A new 4,700-horsepower compressor station in Dodge County, Nebraska;
- A new 9,480-horsepower compressor station in Dakota County, Nebraska; and
- A new meter station in Woodbury County, Iowa.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and

agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (www.ferc.gov) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before January 6, 2014.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the project docket number (CP13–528–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–528). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/ferconline.asp.*

Dated: November 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28896 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–79–000]

Owensboro Municipal Utilities v. Louisville Gas and Electric Company, Kentucky Utilities Company; Notice of Filing

Take notice that on November 22, 2013, Louisville Gas and Electric Company and Kentucky Utilities Company (collectively LG&E/KU) filed its Refund Report in the above-docketed proceeding in compliance with the October 25, 2013 Order on Complaint (Order), 145 FERC ¶ 61,072, issued by the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 13, 2013.

Dated: November 25, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28826 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–126–000]

Yellow Jacket 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 Yellow Jacket 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 December 12, 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: November 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28800 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–1–000]

Zero Rate Reactive Power Rate Schedules; Notice of Staff Workshop

This notice establishes the location and date for the workshop directed by the Commission in *Chehalis Power Generating, L.P.,* Docket No. ER05–1056–007 [1] and announced via notice in this proceeding on October 17, 2013. The workshop is intended to explore the mechanics of public utilities filing reactive power rate schedules for which there is no compensation. The workshop will be held on December 11, 2013 from 1:30 p.m. to 4 p.m. at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The workshop will be led by Commission staff. A subsequent notice detailing the topics to be discussed will be issued in advance of the workshop.

The workshop is open to the public and there is no fee to attend. Although there is no requirement to register for the workshop, those attending are encouraged to pre-register by December 6, 2013 by filling out the on-line registration form located at: *https://www.ferc.gov/whats-new/registration/zero-rate-12-11-13-form.asp.*

The workshop will not be transcribed. However, there will be a free webcast of the workshop. The webcast will allow persons to listen to the workshop, but not participate. Anyone with Internet access who wants to listen can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating the workshop in the Calendar. The Commission Web site's link to the workshop will contain a link to the webcast. The Capitol Connection provides technical support for the webcast. If you have questions, visit *www.CapitolConnection.org* or call 703–992–3100.[2]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: November 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28895 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Chehalis Power Generating, L.P.,* 145 FERC ¶ 61,052 (2013).

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site *www.ferc.gov* for three months after the workshop.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2124–000]

Midcontinent Independent System Operator, Inc.; Supplemental Notice Concerning Post-Technical Conference Comments

As announced in the Notice of Technical Conference issued on October 25, 2013, and as required in the Commission's October 16, 2013 order, Commission staff convened a technical conference in this proceeding on November 19, 2013, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, Hearing Room 6.[1] In the course of the discussion therein, Midcontinent Independent System Operator, Inc. (MISO) clarified several aspects of its proposal and suggested certain modifications to its initially proposed revisions to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). MISO offered to file these changes to its Tariff, if so directed by the Commission in a further order in this proceeding. Staff requests that MISO specify any such further Tariff revisions in its post-technical conference comments, and that parties who choose to file post-technical conference comments or reply comments take these potential Tariff revisions into account, and respond to them as appropriate, in the course of formulating their written submissions.

Parties wishing to file comments on the matters discussed at the technical

[1] *Midcontinent Independent System Operator, Inc.,* 145 FERC ¶ 61,044 (2013).

conference, and wishing to reply to comments filed by others, should do so on the following schedule:

Comments: Due on or before December 3, 2013.

Reply Comments: Due on or before December 13, 2013.

Dated: November 25, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28827 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt:

Docket No.	Filed date	Presenter or requester
1. CP13–73–000; CP13–74–000	10–01–13	FERC Staff [1].
2. CP13–483–000; CP13–492–00	10–23–13	FERC Staff [2].
3. RP13–1031–000	11–04–13	Gov. Matthew H. Mead.
3. P–12613–004	11–04–13	FERC Staff [3].
5. RM13–18–000	11–05–13	Hon. Angus S. King, Jr.
6. CP13–483–000; CP13–492–000	11–06–13	FERC Staff [4].
7. CP13–483–000	11–06–13	FERC Staff [5].
8. CP13–25–000	11–06–13	FERC Staff [6].
9. P–13739–002	11–18–13	FERC Staff [7].
10. CP13–113–000	11–19–13	Phyllis S. Johnson.
11. CP13–483–000; CP13–492–000	11–20–13	FERC Staff [8].

[1] Meeting attendance record.
[2] Telephone record.
[3] Email record.
[4] Telephone record.
[5] Telephone record.
[6] Telephone record.
[7] Email record.
[8] Telephone record.

Dated: November 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28801 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–22–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on November 15, 2013, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP14–22–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to plug and abandon injection/withdrawal well RW–66 and the associated pipeline, RP–66, located in the Greenlick Storage Feld in Potter County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Mathew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, by telephone at (804) 771–4399, by facsimile at (804) 771–4804, or by email at *Mathew.R.Bley@dom.com* or to Tiffany Werts, Regulatory and Certificates Analyst, by telephone (804) 771–4613 or by email at *Tiffany.N.Werts@dom.com*.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: November 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28898 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0258; FRL–9903–72–OAR]

Proposed Information Collection Request; Comment Request; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline under the Tier 2 Rule, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 3, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0258, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuels Compliance Center 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017; fax number: 202–565–2085; email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package

will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: With this ICR renewal, EPA is seeking permission to continue recordkeeping and reporting requirements for refiners and importers as they relate to gasoline sulfur content of motor vehicles under Section 211(e)(1) of the Clean Air Act and 40 CFR part 80, subpart H, and to provide a compliance option whereby a refiner or importer may demonstrate compliance with the gasoline sulfur control requirement via test results. These provisions, which have been in effect since 2006, are designed to grant compliance flexibility.

Respondents/affected entities: Gasoline Refiners, Importers, Gasoline Terminals, Pipelines, Truckers and Users of Research and Development Gasoline.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 1,380 (total).

Frequency of response: On occasion, monthly and annually.

Total estimated burden: 38,498 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,158,065 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in Estimates: This collection has 1,380 respondents. The total annual hourly burden and cost for this ICR is estimated to be 38,571 hours and $3,158,065, respectively. The total number of responses for this ICR is estimated to be 37,665. The cost of this ICR compared with the currently approved OMB collection increased by $584,111 due to better numbers used to calculate burden. The number of respondents, responses and hours has not changed in this renewal.

Dated: November 21, 2013.

Byron Bunker,

Director, Compliance Division.

[FR Doc. 2013–28957 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2012–0803, FRL–9903–83–OW]

Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period.

SUMMARY: On September 27, 2013 the EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 published a request for comments on EPA's draft 2013 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from industrial activity, also referred to as the Multi-Sector General Permit (MSGP).

As initially published in the **Federal Register**, written comments were to be submitted to the EPA on or before November 26, 2013 (a 60-day public comment period). Since publication, the EPA has received a request for additional time to submit comments. Therefore, the EPA is extending the public comment period for 30 days until December 26, 2013.

DATES: The public comment period for the review published September 27, 2013 (79 FR 59672) is being extended for 30 days to December 26, 2013 in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OW–2012–0803, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: waterdocket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2012–0803.
- *Fax:* (202) 566–9744
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA–HQ–OW–2012–0803, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2012–0803. Such deliveries are accepted only during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2012–0803. The EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 disk or CD–ROM you submit. If the EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, the EPA might 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 EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For additional information contact, Bryan Rittenhouse, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–0577; fax number: (202) 564–6384; email address: *rittenhouse.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The draft permit, once finalized, will replace the previous permit covering stormwater discharges from industrial facilities in EPA's Regions 1, 2, 3, 5, 6, 9, and 10 that expired September 29, 2013, and will provide coverage for industrial facilities in areas where EPA is the NPDES permitting authority in EPA's Regions 7 and 8. This draft permit is similar to the previous permit and will authorize the discharge of stormwater in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years. EPA seeks comment on the draft permit and on the accompanying fact sheet.

II. Extension of Comment Period for the NPDES Draft Multi-Sector General Permit

The EPA is extending the deadline for submitting comments on the draft NPDES stormwater Multi-Sector General Permit (MSGP) to December 26, 2013. The original deadline for comments, based on a 60-day comment period, was November 26, 2013. The EPA's decision responds to a request to extend the comment deadline. The EPA believes that this 30-day extension will assist in providing an adequate amount of additional time for the public to review the action and to provide written comments.

Dated: November 25, 2013.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

Dated: November 20, 2013.

Jose C. Font,

Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: November 20, 2013.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: November 19, 2013.

Tinka G. Hyde,

Director, Water Division, EPA Region 5.

Dated: November 19, 2013.

William K. Honker,

Director, Water Quality Protection Division, EPA Region 6.

Dated: November 20, 2013.

Karen Flournoy,

Director, Water, Wetlands, and Pesticides Division, EPA Region 7.

Dated: November 19, 2013.

Howard M. Cantor,

Deputy Regional Administrator, EPA Region 8.

Dated: November 19, 2013.

Jane Diamond,

Director, Water Division, EPA Region 9.

Dated: November 19, 2013.

Daniel D. Opalski,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2013–28988 Filed 12–2–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–14–14DF]

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

Sexually Transmitted Disease Services at US Colleges and Universities: Where are we now?—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 43% of the over 30 million 18–24 year olds in the United States are currently enrolled in college or graduate school. These institutions comprise a mix of 2-year and 4-year colleges, public and private institutions, technical schools, and community colleges. In the U.S., young adulthood is the peak age group for many risk behaviors including unprotected sex. College students, who are typically at the age of most risk for acquiring a sexually transmitted disease (STD), may face challenges when seeking sexual and reproductive health care on campus.

The last national study exploring the availability of STD services in US colleges and universities (2- and 4-year) was conducted in 2001 and found that only 60% (474/736) of schools had a health center. Health centers were more common among larger schools (greater than 4,000 students) that were privately funded and 4-year universities with housing. Of the health centers provided, 66% provided STD services, 55% provided obstetrical and gynecologic care, and 54% provided contraceptive services.

National Survey of Family Growth (NSFG) data estimates that the percentage of 18- to 22-year-olds ever tested for HIV is 34.2%; and only 18% reported being tested in the past year. Although risk factors for HIV/STD transmission (e.g., sex with multiple partners, unprotected sex, and using drugs or alcohol during sexual activity) can be particularly evident among college students in general, students enrolled at colleges with significant

minority enrollment (SMEs) may face additional challenges such as greater risk of transmission during new sexual encounters due to sexual partner networks and limited access to quality healthcare and prevention education. Given this information, there is a great deal of opportunity for expanding access to care, especially among schools which are unable to offer student health services on campus. Many schools, including both 2- and 4-year schools, may find it more difficult to offer student health services because of constrained budgets or geographical location. Depending on location, some may serve a disproportionate number of students from low socio-economic backgrounds which means, in general, their students are more likely to be un- or underinsured or to be Medicaid eligible.

CDC is proposing this information collection to (1) provide an estimate of the proportion of colleges not offering health services on campus, (2) explore the reasons as to why, and (3) describe the current extent of US colleges and universities provisions of health services in regards to HIV/STD education, prevention and treatment. The information will be used to provide technical assistance to colleges and universities interested in alternative solutions for providing health care services to their students.

The list of eligible respondents comes from the Integrated Postsecondary Education Data System (IPEDS), using 2011 enrollment data. Applying our criteria to include only active, 2- or 4-year, degree granting, accredited public or not for profit private schools, that enrolled undergraduates and/or graduate students located in the 50 states and the District of Columbia our total population was 3,337 schools. From these we selected a proportionally stratified random sample of universities and colleges to survey on their provision of health services as they relate to HIV & STD education, treatment and prevention.

The stratified random sample was based on enrollment size of school and significant minority enrollment. Sample size calculation also accounted for an expected low response rate (30%) of first time, online survey participants. The total number of colleges and universities to be surveyed will be 1,150.

Enrollment size was coded based on enrollment number variables in the IPEDS dataset. Significant minority enrollment is based on two criteria: 1) Legislation that designates colleges and universities as Historically Black Colleges and Universities (HBCUs) or as Tribal Colleges and Universities (TCUs). 2) Enrollment-based criteria—Colleges and Universities that are not HBCUs or TCUs, and have at least 25% of the student body that is of an ethnic minority (American Indian or Alaska Native, Asian, Black, Hispanic, Native Hawaiian or other Pacific Islander, mixed race, or those that do not meet the 25% threshold for any one minority group, but minority students as a whole comprised at least 50% of the total student body.

CDC investigators will email an introductory letter inviting the contact person at each school to participate in the survey, noting that the questionnaire should be completed by the person with the most knowledge and access to information about health services on campus. The estimated burden per respondent is approximately 45 minutes; 5 minutes for the introductory letter and 40 minutes for the questionnaire. The questionnaire will collect information regarding various aspects of health services provided by the school. These include requirements for student health insurance, preventive services, testing and treatment of HIV and STDs, partner management, and accessibility of health services by students.

After reading and agreeing to terms outlined in the email letter, the participant will click the included link to the self-administered electronic questionnaire (via SurveyMonkey). Privacy risks are minimal. Only the name, title and contact information of the person filling out the survey will be obtained for the purpose of tracking participation and completion of questionnaires. All electronic files will be password controlled, accessible only to fully authorized personnel, and maintained and protected to the extent allowable by law. Schools will have 3 weeks to respond to the survey. Investigators will send a reminder at 1.5 weeks, 3 days prior to closeout, and then day of. This may need to be extended in order to achieve adequate power for analyses.

Once all the surveys are returned, two researchers will review and contact schools about inconsistent or invalid responses, and make corrections as needed. Basic school characteristics will be gathered from the IPEDs database on each school (e.g. institution type, funding type, size of enrollments, region, etc.). We estimate 4–5 months will be needed to complete data collection.

The total estimated time frame for the project, including administration of the survey, collection period, data analysis and writing, clearance and publication of findings is 9–12 months. The results and findings will be written for publication in a peer-reviewed journal and an aggregated, summary report will be shared with all participating schools. This data collection effort will also allow investigators to provide technical assistance to colleges and universities interested in alternative solutions for providing health care services to their students.

Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Health Services Directors or Campus Administrators.	Web-based survey	1,150	1	40/60	767
Health Services Directors or Campus Administrators.	Introductory E-mail letter	1,150	1	5/60	96
Total					863

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. 2013–28855 Filed 12–2–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review: Comment Request

Title: RPG National Cross-Site Evaluation and Evaluation Technical Assistance.

OMB No.: New Collection.

Description: The Children's Bureau within the Administration for Children and Families of the U.S. Department of Health and Human Services seeks approval to collect information for the Regional Partnership Grants to Increase the Well-being of and to Improve Permanency Outcomes for Children Affected by Substance Abuse (known as the Regional Partnership Grants Program or ''RPG'') Cross-Site Evaluation and Evaluation-Related Technical Assistance project. Under RPG, the Children's Bureau has issued 17 grants to organizations such as child welfare or substance abuse treatment providers or family court systems to develop interagency collaborations and integration of programs, activities, and services designed to increase well-being, improve permanency, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in out-of-home care as a result of a parent's or caretaker's substance abuse. The Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) includes a targeted grants program (section 437(f) of the Social Security Act) that directs the Secretary of Health and Human Services to reserve a specified portion of the appropriation for these Regional Partnership Grants, to be used to improve the well-being of children affected by substance abuse. The overall objective of the Cross-Site Evaluation and Technical Assistance project (the RPG Cross-Site Evaluation) is to plan, develop, and implement a rigorous national cross-site evaluation of the RPG Grant Program, provide legislatively-mandated performance measurement, and furnish evaluation-related technical assistance to the grantees in order to improve the quality and rigor of their local evaluations. The project will evaluate the programs and activities conducted through the RPG Grant Program. The evaluation is being undertaken by the Children's Bureau and its contractor Mathematica Policy Research. The evaluation is being implemented by Mathematica Policy Research and its subcontractors, Walter R. McDonald & Associates and Synergy Enterprises.

The RPG Cross-Site Evaluation will include the following components:

1. *Implementation and Partnership Study.* The RPG cross-site implementation and partnership study will contribute to building the knowledge base about effective implementation strategies by examining the process of implementation in the 17 RPG projects, with a focus on factors shown in the research literature to be associated with quality implementation of evidence-based programs. This component of the study will describe the RPG projects' target populations, selected interventions and their fit with the target populations, inputs to implementation, and actual services provided (including dosage, duration, content, adherence to curricula, and participant responsiveness). It will examine the key attributes of the regional partnerships that grantees develop (for example, partnerships among child welfare and substance abuse treatment providers, social services, and the courts). It will describe the characteristics and roles of the partner organizations, the extent of coordination and collaboration, and their potential to sustain the partnerships after the grant ends. Key data collection activities of the implementation and partnership study are: (1) Conducting site visits during which researchers will interview RPG program directors, managers, supervisors, and frontline staff who work directly with families; (2) administering a survey to frontline staff involved in providing direct services to children, adults, and families; (3) asking grantees to provide information about implementation and their partnerships as part of their federally required semi-annual progress reports; (4) obtaining service use data from grantees, enrollment date and demographics of enrollees, exit date and reason, and service participation, to be entered into a web-based system developed and operated by Mathematica Policy Research and its subcontractors; and (5) administering a survey to representatives of the partner organizations.

2. Outcomes Study. The goal of the outcomes study is to describe the changes that occur in children and families who participate in the RPG programs. This study will describe participant outcomes in five domains: (1) Child well-being, (2) family functioning/stability, (3) adult recovery from substance use, (4) child permanency, and (5) child safety. Two main types of outcome data will be used—both of which are being collected by RPG grantees: (1) Administrative child welfare and adult substance abuse treatment records and (2) standardized instruments administered to the parents and/or caregivers. The Children's Bureau is requiring grantees to obtain and report specified administrative records, and to use a prescribed set of standardized instruments. Grantees will provide these data to the Cross-Site Evaluation team twice a year by uploading them to a data system developed and operated by Mathematica Policy Research and its subcontractors.

3. Impact Study. The goal of the impact study is to assess the impact of the RPG interventions on child, adult, and family outcomes by comparing outcomes for people enrolled in RPG services to those in comparison groups, such as people who do not receive RPG services or receive only a subset of the services. The impact study will use demographic and outcome data on both program (treatment) and comparison groups from a subset of grantees with appropriate local evaluation designs such as randomized controlled trials or strong quasi-experimental designs; 7 of the 17 grantees have such designs. Site-specific impacts will be estimated for these seven grantees. Aggregated impact estimates will be created by pooling impact estimates across appropriate sites to obtain a more powerful summary of the effectiveness of RPG interventions.

In addition to conducting local evaluations and participating in the RPG Cross-Site Evaluation, the RPG grantees are legislatively required to report performance indicators aligned with their proposed program strategies and activities. A key strategy of the RPG Cross-Site Evaluation is to minimize burden on the grantees by ensuring that the cross-site evaluation, which includes all grantees in a study that collects data to report on implementation, the partnerships, and participant characteristics and outcomes, fully meets the need for performance reporting. Thus, rather than collecting separate evaluation and performance indicator data, the grantees need only participate in the cross-site evaluation. In addition, using the standardized instruments that the Children's Bureau has specified will ensure that grantees have valid and

reliable data on child and family outcomes for their local evaluations. The inclusion of an impact study conducted on a subset of grantees with rigorous designs will also provide the Children's Bureau, Congress, grantees, providers, and researchers with information about the effectiveness of RPG programs.

A 60-Day **Federal Register** Notice was published for this study on September 19, 2013. This 30-Day **Federal Register** Notice covers the following data collection activities: (1) The site visits with grantees; (2) the web-based survey of frontline staff who provide direct services to children, adults, and families, and their supervisors; (3) the semi-annual progress reports; (4) enrollment and service data provided by grantees; (5) the web-based survey of grantee partners; and (6) outcome data provided by grantees.

Respondents. Respondents include grantee staff or contractors (such as local evaluators) and partner staff. Specific types of respondents and the expected number per data collection effort are noted in the burden table below.

Annual burden estimates. The following instruments are proposed for public comment under this 30-Day **Federal Register** Notice. Burden for all components is annualized over three years.

RPG CROSS-SITE EVALUATION ANNUALIZED BURDEN ESTIMATES

Data collection activity	Total number of respondents	Number of responses per respondent (each year)	Average burden hours per response (in hours)	Estimated total burden hours	Total annual burden hours
Implementation and Partnership Study					
Program director individual interview	17	.67	2	68	22.6
Program manager/supervisor group interview	153	.67	2	612	204
Program manager/supervisor individual interviews	102	.67	1	204	68
Frontline staff individual interviews	102	.67	1	204	68
Semi-annual progress reports	17	2	16.5	1,683	561
Case enrollment data	51	30	0.25	1,147.5	382.5
Service log entries	102	780	.05	11,934	3,978
Staff survey	340	.67	0.42	283.2	94.4
Partner survey	340	.67	0.33	226.8	75.6
Data Entry for Outcomes Study					
Administrative Data.					
Obtain access to administrative data	17	1	42.6	2,175	725
Report administrative data	17	2	144	14,688	4,896
Standardized instruments.					
Review and adopt reporting templates	17	.33	8	136	45.33
Enter data into local database	17	2	112.5	11,475	3,825
Review records and submit	17	2	100	10,200	3,400
Additional Data Entry for Impact Study					
Data entry for comparison study sites (7 grantees)	7	2	36.1	1,519	506.3
Estimated Total Burden Hours					18,852

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Children's Bureau within the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to Administration for Children and Families, Office of Administration, Office of Information, Service, 370 L'Enfant Promenade SW., Washington DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRASUBMISSION@OMB.EoP.GOV,* Attn: Desk Officer for the Administration of Children and Families.

Dated: November 27, 2013.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–28861 Filed 12–2–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of

petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on October 1, 2013 through October 31, 2013. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: November 27, 2013.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Douglas Swift, Robbinsdale, Minnesota, Court of Federal Claims No: 13–0763V
2. Aleskis Brown on behalf of Isaiah Harris, Memphis, Tennessee, Court of Federal Claims No: 13–0766V
3. Reshama Shaikh, Philadelphia, Pennsylvania, Court of Federal Claims No: 13–0767V
4. Tammy Andrisek, Hamilton, Ohio, Court of Federal Claims No: 13–0768V
5. Clifton C. Eastin on behalf of Betty A. Eastin, Deceased, Aurora, Nebraska, Court of Federal Claims No: 13–0769V
6. Jeffrey W. Magera, St. Cloud, Minnesota, Court of Federal Claims No: 13–0770V
7. Christine Ketcham, Manhasset, New York, Court of Federal Claims No: 13–0771V
8. Barbara Carroll, Boston, Massachusetts, Court of Federal Claims No: 13–0772V
9. Sherry G. Alexander, San Antonio, Texas, Court of Federal Claims No: 13–0775V
10. Huey Hampton, Beaumont, Texas, Court of Federal Claims No: 13–0776V
11. Shawn Kao, Bellevue, Washington, Court of Federal Claims No: 13–0777V
12. Brenda Theriot, Flower Mound, Texas, Court of Federal Claims No: 13–0778V
13. Misty and James Hogan on behalf of S.M.H., Reading, Pennsylvania, Court of Federal Claims No: 13–0780V
14. Kenneth Schultheis, Baltimore, Maryland, Court of Federal Claims No: 13–0781V
15. Donna Monarch, Washington, District of Columbia, Court of Federal Claims No: 13–0782V
16. Linda Wheeler, Bel Air, Maryland, Court of Federal Claims No: 13–0783V
17. James J. Cotner, Tucson, Arizona, Court of Federal Claims No: 13–0785V
18. Geraldine Jones, Lena, Mississippi, Court of Federal Claims No: 13–0786V
19. Summer Paolone, Philadelphia, Pennsylvania, Court of Federal Claims No: 13–0787V
20. Adrienne N. Severt, North Wilkesboro, North Carolina, Court of Federal Claims No: 13–0788V
21. Robert Rotterman, Orchard Park, New York, Court of Federal Claims No: 13–0791V
22. Vivian Morales Rivera, Guayama, Puerto Rico, Court of Federal Claims No: 13–0793V
23. Janet Buksa, Palos, Illinois, Court of Federal Claims No: 13–0795V
24. Kathleen Harman, Cedar Park, Texas, Court of Federal Claims No: 13–0796V
25. Luis Gamardo, Boston, Massachusetts, Court of Federal Claims No: 13–0797V
26. Connie C. Medina, Carson City, Nevada, Court of Federal Claims No: 13–0798V
27. Elizabeth and Andrew Fouch on behalf of Jessica Fouch, Manhattan Beach, California, Court of Federal Claims No: 13–0799V
28. Timothy P. Bombard and Jacqueline Bombard on behalf of Lucy Bombard, Somers Point, New Jersey, Court of Federal Claims No: 13–0801V
29. Debra L. Kuhn, North Willowgrove, Pennsylvania, Court of Federal Claims No: 13–0802V
30. Margaret Turiano, Philadelphia, Pennsylvania, Court of Federal Claims No: 13–0803V
31. Mark Cleveland, Toccoa, Georgia, Court

of Federal Claims No: 13–0804V
32. Patricia Okai, Oak Forrest, Illinois, Court of Federal Claims No: 13–0805V
33. Kimberly Bowman, Staten Island, New York, Court of Federal Claims No: 13–0807V
34. Jessica and Ryan Dean on behalf of Iris Dean, Phoenix, Arizona, Court of Federal Claims No: 13–0808V
35. Mavis E. Luther, Le Mars, Iowa, Court of Federal Claims No: 13–0810V
36. Tracy Fox, Southampton, Pennsylvania, Court of Federal Claims No: 13–0813V
37. Leona Faye Thompson, Marshall County, Alabama, Court of Federal Claims No: 13–0815V
38. Paul Grabarek, Chicago, Illinois, Court of Federal Claims No: 13–0817V
39. Alanna Sullivan Barker, Littleton, Colorado, Court of Federal Claims No: 13–0818V
40. Lisa Ann Hambleton, Tiffin, Ohio, Court of Federal Claims No: 13–0819V
41. Cathy A. Liva, Honolulu, Hawaii, Court of Federal Claims No: 13–0820V
42. Henry Simmons, Boston, Massachusetts, Court of Federal Claims No: 13–0825V
43. Ronniesha Thomas, Waterbury, Connecticut, Court of Federal Claims No: 13–0827V
44. Lisa Jones, Washington, District of Columbia, Court of Federal Claims No: 13–0828V
45. David D. Leoce, Clermont, Florida, Court of Federal Claims No: 13–0829V
46. Robin Harrison, Cincinnati, Ohio, Court of Federal Claims No: 13–0831V
47. Robert N. Jacobson, Putnam, Connecticut, Court of Federal Claims No: 13–0832V
48. Demetrice Bell-O'Neal on behalf of A.O., Sarasota, Florida, Court of Federal Claims No: 13–0835V
49. Charles Kiklis, Somerville, Massachusetts, Court of Federal Claims No: 13–0836V
50. Mae Miller, Pittsburgh, Pennsylvania, Court of Federal Claims No: 13–0837V
51. Brad Colvis, Sacramento, California, Court of Federal Claims No: 13–0841V
52. Kevin M. Meaney, Naples, Florida, Court of Federal Claims No: 13–0842V
53. Thomas O'Keeffe, Falmouth, Massachusetts, Court of Federal Claims No: 13–0847V
54. Debbie Harris, Boston, Massachusetts, Court of Federal Claims No: 13–0848V
55. Kristin Cooper and Arthur Writesel on behalf of SW., Boston, Massachusetts, Court of Federal Claims No: 13–0849V
56. Jeffrey Faucher and Filomena Faucher on behalf of C.F., Boston, Massachusetts, Court of Federal Claims No: 13–0850V
57. Seechel Patel, Coral Springs, Florida, Court of Federal Claims No: 13–0851V
58. Adam Luna on behalf of E.L., Court of Federal Claims No: 13–0852V
59. Gary Abdulla, Boston, Massachusetts, Court of Federal Claims No: 13–0853V
60. Douglas Andor, Chicago, Illinois, Court of Federal Claims No: 13–0858V
61. Aaron Sandoval, Phoenix, Arizona, Court of Federal Claims No: 13–0860V

[FR Doc. 2013–28889 Filed 12–2–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Rapid Throughput Standardized Evaluation of Transmissible Risk for Substance Use Disorder in Youth

SUMMARY: 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 National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (2) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instructions, contact Dr. Augie Diana, Health Scientist Administrator, Prevention Research Branch, Division of Epidemiology, Services, and Prevention Research, NIDA, NIH, 6001 Executive Boulevard, Room 5163, Bethesda, MD 20892, or call non-toll-free number (301) 443–1942 or Email your request, including your address to: *dianaa@nida.nih.gov.* Formal request for additional plans and instruments must be requested in writing.

DATES: *Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the data of this publication.

Proposed Collection: Rapid Throughput Standardized Evaluation of Transmissible Risk for Substance Use Disorder in Youth, 0925-New, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: This study will finalize the development of the Transmissible Liability Index (TLI), thereby advancing the TLI from a research tool to a practical instrument. The TLI is a psychometric tool for detecting youth at elevated risk for substance use disorder (SUD). The TLI, a web-based platform for assessing risk of SUD, is a highly efficient tool both in terms of the limited time commitment required as well as its low cost. The inexpensive and high efficiency of the TLI for identifying youths in need of prevention, and the strong cost-benefits to society for SUD prevention, portend strong demand for use in a variety of populations including family and social services, schools, mental health facilities, and youth protection agencies. To transform the TLI prototype into a practical instrument, three core tasks remain: (1) Standardization on a sample (N = 5,000) that is representative of the general population to generate norms that are specific to age, gender and ethnicity; (2) Construct validity analysis using standard parametric modeling techniques to show that heritability accounts for the major portion of variance on TLI scores; the sample (150 identical and 150 fraternal twins) will be representative of the same general population characteristics identified above; and (3) Psychometric analysis of validity and reliability based on the above data. Validating the TLI furthers NIDA's mission by legitimating the tool for exploring the attitudes and social predictors of addictive behaviors with the intention of reducing or eliminating drug-taking behavior. This research is squarely within NIDA's mission of research on drug abuse and addiction, as well as its focus on ensuring the rapid and effective dissemination and use of the results to significantly improve efforts to stem substance use disorder. To move the TLI from the research domain to practical use through commercial dissemination, the research and development team (''the R&D team'') needs to satisfy professional quality standards consistent with American Psychological Association regulations. To satisfy those standards, the R&D team must demonstrate the reliability and internal validity of the TLI against existing standardized psychometric studies for youth populations, ages 14 to 18. The 14-to-18 year old age range was selected because it encompasses the years typically spent in high school, which are known to be the timeframe when substance use is

likely to begin and accelerates, often leading to substance abuse disorder. Notably, the peak period for the manifestation of cannabis-use disorder is age 18–19, and the past-year-prevalence for alcohol-use disorder is age 20–22. The TLI is designed to identify the propensity for these and other substance abuse prior to manifestation; as such, collecting data from the high school age group (14–18 years old) is critical to identifying at-risk youths for the purposes of early intervention. Thus, the TLI must be tested with data collected from youth populations, ages 14 to 18, comparable to those in existing studies. Moreover, the R&D team must provide psychometric external validation for the TLI through data collection from sets of identical and fraternal twins. Psychometric analyses are required to show that the TLI performs according to expectations. Accordingly, studies will be performed on the collected information to demonstrate i) construct, ii) discriminative, iii) concurrent, and iv) predictive validity.

OMB approval is requested for 2 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,083.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent: individuals and households	Number of respondents	Responses per respondent	Average burden per response (in hours)	Annual hour burden
Parent of 14–17 year-old students: Consent Form	5,000	1	1/60	83
14–18 year-old students: School Survey (TLI)		1	30/60	2,500
14–18 year-old youths or their parents: Consent Form	600	1	1/60	10
14–18 year-old youths: Twins Survey (Demo/D&A)		1	10/60	100
14–18 year-old youths: Twins Survey (Dysregulation)		1	10/60	100
14–18 year-old youths: Twins Survey (TLI)		1	29/60	290

Dated: November 20, 2013.

Glenda J. Conroy,

Executive Officer (OM Director), NIDA, NIH.

[FR Doc. 2013–28985 Filed 12–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke, Special Emphasis Panel, Stroke Trials Network-NDMC.

Date: December 18, 2013.

Time: 9:00 a.m. to 2:30 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: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–402–0288, *Natalia.Strunnikova@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 26, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–28854 Filed 12–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PAR13–228: Biomarkers for Diabetes, Digestive, Kidney and Urologic Diseases using Repository Biosamples.

Date: February 20, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–28851 Filed 12–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Brain Disorders in the Developing World.

Date: December 9, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, PAR Panel: Tobacco Control Regulatory Research.

Date: December 16, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846- 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 26, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–28853 Filed 12–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR11–306: NIDDK Central Repositories Non-Renewable Sample Access Review (X01): HCC, Urology and Hemodialysis.

Date: January 24, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–28852 Filed 12–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified laboratories and IITF is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Publicc Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct

drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant Laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITF in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection

processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2013–28862 Filed 12–2–13; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0003]

Agency Information Collection Activities: Application to Extend/Change Nonimmigrant Status; Form I–539; Revision of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 13, 2013, at 78 FR 35639, allowing for a 60-day public comment period. USCIS received two comments for this information collection. A discussion of the comments and USCIS' responses are addressed in item 8 of the supporting statement that can be viewed at: *http://www.regulations.gov.*

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 2, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov*, to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2007–0038. When submitting comments by email, please make sure to add [Insert OMB Control Number 1615–0003] in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–539; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used to apply for an extension of stay or for a change to another nonimmigrant classification. USCIS will be combining Supplement A to Form I–539, Filing Instructions for V Nonimmigrant Status; OMB Control No. 1615–0004, in Form I–539 instructions under OMB Control No. 1615–0003.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–539—117,907 total respondents with those responding via the paper I–539 form requiring an estimated 1.88 hours per response, and 16,385 filers responding via the Electronic Immigration System (ELIS) requiring an estimated 1.75 hours. Supplement A—1,216 total respondents responding via the paper I–539A requiring an estimated .50 hours per response. Biometrics processing—134,292 total respondents with a burden of 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 409,292 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: November 27, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–28937 Filed 12–2–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Reinstatement, Without Change; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; Form No. I–333, Obligor Change of Address; OMB Control No. 1653–0042.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on July 19, 2013, Vol. 78 No. 18062 allowing for a 60 day comment period. USICE received no comments during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of an expired collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–133, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The data collected on this form is used by ICE to ensure accuracy in correspondence between ICE and the obligor. The form serves the purpose of standardizing obligor notification of any changes in their address, and will facilitate communication with the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Dated: November 27, 2013.

Scott Elmore,

Forms Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–28870 Filed 12–2–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Reinstatement, Without Change; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; Form No. I–333, Obligor Change of Address; OMB Control No. 1653–0042.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on July 29, 2013, Vol. 78 No. 18062 allowing for a 60 day comment period. USICE received no comments during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of an expired collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–133, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The data collected on this form is used by ICE to ensure accuracy in correspondence between ICE and the obligor. The form serves the purpose of standardizing obligor notification of any changes in their address, and will facilitate communication with the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Dated: November 27, 2013.

Scott Elmore,

Forms Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–28884 Filed 12–2–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0008; OMB Control Number 1014–NEW; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Application for Permit To Drill; Proposed Collection; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The submission of this information collection request (ICR) is necessary so that both industry and BSEE have a better understanding of the regulatory requirements associated with all supporting data and information that is submitted with an Application for Permit to Drill (APD), a Revised APD, and the Supplemental APD Information Sheet under the multiple subparts. This ICR will separate out the hours and non-hour cost burdens associated with APDs and Supplemental APDs from its currently approved IC into its own separate collection; it will also reflect more accurate burden estimates.

DATES: You must submit comments by February 3, 2014.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0008 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Application for Permit to Drill and all supporting documentation.

Forms: BSEE–0123 and BSEE–0123S.

OMB Control Number: 1014–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 et seq. and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the Outer Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25 authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Applications for permits to drill are subject to cost recovery, and BSEE regulations specify service fees for these requests.

Regulations implementing these responsibilities are among those delegated to BSEE. The regulations at 30 CFR part 250 stipulate the various requirements that must be submitted with an APD, Revised APD, (Form BSEE–0123) and a Supplemental APD Information Sheet (Form BSEE–0123S) which is the subject of this collection. Currently, an APD is covered only under 30 CFR part 250, subpart D, 1014–0018, and when discussed in Subparts A, E, H, and P, they are cross referenced. It is difficult to correlate the APD burden requirements in the other subparts with their respective burden.

By putting APDs, Revised APDs, and the supplemental APD information sheet, along with all the required documentation throughout the various subparts into one ICR, we feel that this situation will be alleviated and will reflect more accurate burden estimates. This request also covers the related Notices to Lessees and Operators (NTLs) that we issue to clarify, supplement, or provide additional guidance on some aspects of our regulations.

In this ICR, we have included a certification statement on both forms to state that false submissions are subject to criminal penalties. Also, we clarified some sections of the Form BSEE–0123. This poses minor edits and they are as follows:

Question #17—facility name was added;

Question #25—revised the citations for accuracy;

Question #33—added new question—H) Has the drilling rig been approved for the use of digital BOP testing? If yes, which version?

The forms that are submitted and their purposes are: Application for Permit to Drill, BSEE–0123, and Supplemental APD Information Sheet (Casing Design), BSEE–0123S. We use the information that is submitted with these forms to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, cementing programs and blowout preventer (BOP) systems to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. The BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on these forms.

The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.* No items of a sensitive nature are collected. Responses are required to obtain or retain a benefit or they are mandatory.

Frequency: On occasion and as required in the regulations.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: In this submission, we are estimating 47,800 burden hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Note: In the Burden Table, a Revised APD hour burden is preceded by the letter R.

BILLING CODE 4310–VH–P

BURDEN TABLE

Citation 30 CFR 250 for Application for Permit to Drill (APD)	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burden		
Subparts A, D, E, H, P	Apply for permit to drill, sidetrack, bypass, or deepen a well submitted via Forms BSEE-0123 (APD) and BSEE-0123S (Supplemental APD). (This burden represents only the filling out of the forms, the requirements are listed separately below.)	1	408 applications	408
		$2,123 fee x 408 = $866,184		
Subparts D and E	Obtain approval to revise your drilling plan or change major drilling equipment by submitting a Revised APD and Supplemental APD [no cost recovery fee for Revised APDs]. (This burden represents only the filling out of the forms, the requirements are listed separately below).	1	662 submittals	662
		Subtotal	**1,070 responses**	**1,070 hours**
			$866,184 non-hour cost burdens	
Subpart A				
125	Submit evidence of your fee for services receipt.	Exempt under 5 CFR 1320.3(h)(1).		0
197	Written confidentiality agreement.	Exempt under 5 CFR 1320.5(d)(2).		0
Subpart D				
409	Request departure approval from the drilling requirements specified in this subpart; identify and discuss.	1	367 approvals	367
410(d)	Submit to the District Manager: An original and two complete copies of APD and Supplemental APD; separate public information copy of forms per § 250.186.	0.5	380 submittals	190
		R- 0.5	380 submittals	190
411; 412	Submit plat showing location of the proposed well and all the plat requirements associated with this section.	2	380 submittals	760
411; 413; 414; 415;	Submit design criteria used and all description requirements; drilling prognosis with description of the procedures you will follow; and casing and cementing program requirements.	11.5	707 submittals	8,131

411; 416	Submit diverter and BOP systems descriptions and all the regulatory requirements associated with this section.	3	380 submittals	1,140
411; 417	Provide information for using a MODU and all the regulatory requirements associated with this section.	10	682 submittals	6,820
411; 418	Additional information required when providing an APD include, but not limited to, rated capacities of drilling rig and equipment if not already on file; quantities of fluids, including weight materials; directional plot; H2S; welding plan; and information we may require per requirements, etc.	19	380 submittals	7,220
420(a)(6)	(i) Include signed registered professional engineer certification and related information.	3	1,034 certification	3,102
423(b)(3)	Submit for approval casing pressure test procedures and criteria. On casing seal assembly ensure proper installation of casing or line (subsea BOP's only).	3	527 procedures & criteria	1,581
423(c)(3)	Submit test procedures and criteria for a successful negative pressure test for approval.	2.5	355 submittals	888
	If any change, submit changes for approval.	R-4	1 change	4
432	Request departure from diverter requirements; with discussion and receive approval.	5	53 requests	265
447(c)	Indicate which casing strings and liners meet the criteria of this section.	1	355 casing / liner info	355
448(b)	Request approval of test pressures (RAM BOPs).	2	353 requests	706
448(c)	Request approval of pressure test (annular BOPs).	1	380 requests	380
449(j)	Submit test procedures, including how you will test each ROV intervention function, for approval (subsea BOPs only).	2	507 submittals	1,014
449(k)	You must submit test procedures (autoshear and deadman systems) for approval. Include documentation of the controls / circuitry system used for each test; describe how the ROV will be utilized during this operation.	2.5	507 submittals	1,268
456(j)	Request approval to displace kill-weight fluid; include reasons why along with step-by-step procedures.	4.5	518 approval requests	2,331
460(a)	Include your projected plans if well testing along with the required information.	12	2 plans	24
490(c)(2 thru 4)	(2) Request to classify an area for the presence of H2S.	3	91 requests	273
	(3) Support request with available information such as G&G data, well logs, formation tests, cores and analysis of formation fluids.	3	73 submittals	219

	(4) Submit a request for reclassification of a zone when a different classification is needed.	1	4 requests	4
Alaska Region: 410; 412 thru 418; 420; 442; 444; 449; 456;	Due to the difficulties of drilling in Alaska, along with the shortened time window allowed for drilling, Alaska hours are done here as stand alone requirement. Also, note that these specific hours are based on the first APD in Alaska in more than 10 years.	2,800	1 request	2,800
		Subpart D subtotal	**8,417 responses**	**40,032 hours**
	Subpart E			
513	(a) Obtain approval to begin well completion operations. If completion is planned and the data are available you may submit on forms.	3	288 requests	864
		R-6	1 request	6
	b) Submit description of well-completion, schematics, logs, any H2S; on form.	16.5	295 submittals	4,868
		R-26	1 submittal	26
516(a)	Submit well-control procedure indicating how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.	3	295 procedures	885
		Subpart E Subtotal	**880 responses**	**6,649 hours**
	Subpart H			
807(a)	Submit detailed information that demonstrates the SSSVs and related equipment are capable of performing in HPHT.	3.75	1 submittal	4
		Subpart H subtotal	**1 response**	**4 hours**
	Subpart P			
Note that for Sulphur Operations, while there may be 45 burden hours listed, we have not had any sulphur leases for numerous years, therefore, we have submitted minimal burden.				
1605(b)(3)	Submit information on the fitness of the drilling unit.	4	1 submittal	4
1617	(a) Request approval before drilling a well.	1	1 submittal	1
	(b) Include rated capacities of the proposed drilling unit and of major drilling equipment.	3	1 submittal	3
	(c) Include a fully completed Form BSEE-0123 and the requirements of this section.	34	1 submittal	34
1622(b)	Submit description of well-completion or workover procedures, schematic, and if H2S is present.	3	1 submittal	3
		Subtotal of subpart P	**5 responses**	**45 hours**
		Total Burden	**10,373 Responses**	**47,800 Hours**
			$866,184 Non Hour Cost Burden	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden for this collection. The 30 CFR part 250 regulations require a $2,123 cost recovery fee (non-hour cost burden) for APD submittals. The application fee is required to recover the Federal Government's processing cost, and we have not identified any other non-hour cost burdens in this ICR. We estimate a total reporting non-hour cost burden of $866,184 for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed

collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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: November 22, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–28835 Filed 12–2–13; 8:45 am]

BILLING CODE 4310–VH–C

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0005; OMB Control Number 1014–NEW; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Application for Permit To Modify; Proposed Collection; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The submission of this information collection request (ICR) is necessary so that both industry and BSEE have a better understanding of the regulatory requirements associated with all supporting data and information that is submitted with an Application for Permit to Modify (APM) under the multiple subparts. This ICR will separate out the hours and non-hour cost burdens associated with APMs from its currently approved IC into its own separate collection; it will also reflect more accurate burden estimates.

DATES: You must submit comments by February 3, 2014.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0005 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0017 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Application for Permit to Modify (APM), BSEE–0124.

Form: BSEE–0124.

OMB Control Number: 1014–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the Outer Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

In addition to the general authority of OCSLA, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. The Secretary has delegated some of the authority under FOGRMA to BSEE.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, the Bureau of Safety and Environmental Enforcement (BSEE) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Applications for permits to drill are subject to cost recovery, and BSEE regulations specify a service fee for this request.

Regulations implementing these responsibilities are among those delegated to BSEE. The regulations at 30 CFR part 250 stipulate the various requirements that must be submitted with an Application for Permit to Modify (APM), Form BSEE–0124, which are the subject of this collection. Currently, an APM is covered under 30

CFR part 250, subpart D, 1014–0018, and when discussed in Subparts E, F, H, P, Q, they are cross referenced. It is difficult to correlate the APM burden requirements in the other subparts with their respective burden. By putting APMs, along with all the required documentation throughout the various subparts into one ICR, we feel that this situation will be alleviated and will reflect more accurate burden estimates. This request also covers the related Notices to Lessees and Operators (NTLs) that we issue to clarify, supplement, or provide additional guidance on some aspects of our regulations.

In this ICR, we have included a certification statement on the form to state that false submissions are subject to criminal penalties. Also, we clarified some sections of Form BSEE–0124. This poses minor edits and they are as follows:

Question #8 was split into 8a. and 8b. Current question 8 is now 8a. Question 8b. asks for the well status (current), and

Question #18 updated the regulatory citations.

The BSEE uses the information to ensure safe well completion, workover and decommissioning operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The well completion, workover and decommissioning unit is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each well completion, workover and decommissioning crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

We also use the information to determine the conditions of the site to avoid hazards inherent in well completion, workover and decommissioning operations. Specifically, we use the information to evaluate and approve the adequacy of the equipment, materials, and/or procedures that the lessee or operator plans to use during well completion, workover and decommissioning plan modifications and changes in major equipment. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information that is submitted.

The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.* No items of a sensitive nature are collected. Responses are required to obtain or retain a benefit or they are mandatory.

Frequency: On occasion and as required in the regulations.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: In this submission, we are estimating 9,770 burden hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BILLING CODE 4310–VH–P

Citation 30 CFR 250 APM's	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
Subparts D, E, F, H, P, Q	Submit plans on BSEE-0124 (Application for Permit to Modify). (This burden represents only the filling out of the form, the requirements are listed separately below).	1	2,893 applications	2,893
		2,893 applications x $125 application fee = $361,625		
Subparts D, E, F, H, P, Q	Submit revised plans on BSEE-0124 (Application for Permit to Modify). (This burden represents only the filling out of the form, the requirements are listed separately below). [GOMR does not charge for revised APMs].	1	1,551 applications	1,551
		Subtotal	**4,444 responses**	**4,444 hour burdens**
			$361,625 non-hour cost burdens	
Subpart A				
125	Submit evidence of your fee for services receipt.	Exempt under 5 CFR 1320.3(h)(1).		0
197	Written confidentiality agreement.	Exempt under 5 CFR 1320.5(d)(2).		0
Subpart D				
423(c)(3); 449(j); 449(k); 460(a); 465	There are some regulatory requirements that give respondents the option of submitting with their APD or APM; industry advised us that when it comes to this particular subpart, they submit a Revised APD. There are no APM submittals under this subpart.	Burden covered under 30 CFR 250, Subpart D - 1014-0018.		0
Subpart E				
513(a)	Obtain written approval for well-completion operations. Submit the following information, which includes but not limited to: request approval for the completion or if the completion objective or plans have changed; description of the well-completion procedures; statement of the expected surface pressure, and type and weight of completion fluids; schematic drawing; a partial electric log; H2S presence or if unknown.	1	181 submittals	181
514(d)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	40 mins.	175 submittals	117
515	(a thru c) For completion operations, include the following BOP descriptions: components, pressure ratings and test pressures; schematic; independent third-party verification and supporting documentation about blind-shear rams.	30 mins.	181 submittals	91

	(d) When you use a subsea BOP stack, submit independent third-party verification about BOP stack requirements.	15 mins.	17 submittals	4
	(e)(1), (2) Independent third-party qualifications and evidence/ supporting documentation demonstrating their abilities.	20 mins.	192 submittals	64
516(a)	Submit a well-control procedure that indicates how the annular preventer will be utilized, and the pressure limitations that will be applied during each mode of pressure control.	15 mins.	181 submittals	45
517(d)	(8) Submit for approval test procedures, including how you will test each ROV function.	20 mins.	17 submittals	6
	(9)(i) Submit for approval test [autoshear and deadman] procedures. Include all required documentation.	15 mins.	17 submittals	4
526(a)	Submit a notification of corrective action of the diagnostic test.	15 mins.	68 notifications	17
	Subtotal of Subpart E		**1,046 responses**	**529 hour burdens**
	Subpart F			
613	(a), (b) Request approval to begin other than normal workover, which includes description of procedures, changes in equipment, schematic, info about H2S, etc..	30 mins.	802 requests	401
	(c) If completing to a new zone, submit reason for abandonment and statement of anticipated pressure data for new zone.	10 mins.	205 submittal	34
	(d) Within 30 days after completing the well-workover operation, except routine operations, submit showing the work as performed.	15 mins.	762 submittals	191
614(d)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	40 mins.	51 requests	34
615	(a thru c) For workover operations, include the following BOP descriptions with your submittal: components, pressure ratings and test pressures; schematic; independent third-party verification and supporting documentation about blind-shear rams.	30 mins.	629 submittals	315
	(d) When you use a subsea BOP stack, independent third-party verification about BOP stack requirements.	15 mins.	51 verifications	13
	(e)(1), (2) Independent third-party qualifications and evidence/ supporting documentation demonstrating their abilities.	20 mins.	576 submittals	192

616(a)	Submit well-workover procedures how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.	20 mins.	629 procedures	210
616(f)(4)	Obtain approval to conduct operations without downhole check valves, describe alternate procedures and equipment to conduct operations without downhole check valves.	15 mins.	273 approvals	68
617(d), (h)(1+2)	Obtain approval: stump test and include procedures; test procedures, including how you will test each ROV function and autoshear deadman; include required documentation; and utilization description.	40 mins.	51 approvals	34
	Subtotal of Subpart F		**4,029 responses**	**1,492 hour burdens**
	Subpart H			
801(h)	Request approval to temporarily remove safety device for non-routine operations.	10 mins.	55 approvals	9
807(a)	Submit detailed information that demonstrates the SSSVs and related equipment capabilities re HPHT; include discussions of design verification analysis and validation, functional listing process, and procedures used; explain fit-for-service.	40 mins.	15 submittals	10
	Subtotal of Subpart H		**70 responses**	**19 hour burdens**
	Subpart P			
It needs to be noted that for Sulphur Operations, while there may be burden hours listed that are associated with some form of an APM submittal, we have not had any sulphur leases for numerous years, therefore, we are submitting minimal burden.				
1618(a), (b)	Request approval / submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities; include but not limited to, detailed statement of proposed work changed; present state of well; after completion, a detailed report of all the work done and results.	30 mins.	1 plan	1
1619(b)	Submit duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition.	10 mins.	1 submittal	1
1622(a), (b)	Obtain written approval to begin operations; include description of procedures followed; changes to existing equipment, schematic drawing; zones info re H2S, etc.	20 mins.	1 approval	1
1622(c)	(2) Submit results of any well tests and a new schematic of the well if any subsurface equipment has been changed.	10 mins.	1 submittal	1

	Subtotal of Subpart P		**4 responses**	**4 hour burdens**
	Subpart Q			
1706(a)	Request approval of well abandonment operations.	20 mins.	710 requests	237
1706(f)	(4) Request approval to conduct operations without downhole check valves, describe alternate procedures and equipment.	15 mins.	500 requests	125
1707(d)	Submit and obtain approval of plan describing the stump test procedures.	10 mins.	50 submittals	8
1707(h)	(1) Submit test procedures, including how you will test each ROV function for approval; include documentation and utilization description.	30 mins.	50 submittals	25
1709	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	30 mins.	50 submittals	25
1712; 1704(g)	(a), (b), (d), (f)(9 + 11), (g) Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to, reason plugging well, with relevant information; well test and pressure data; type and weight of well control fluid; a schematic listing mud and cement properties; plus testing plans. Submit Certification by a Registered Professional Engineer of the well abandonment design and procedures; certify the design	40 mins.	244 certifications	163
	(c), (e), (f) Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to max surface pressure and determination; description of work; well depth, perforated intervals; casing and tubing depths/details, plus locations, types, lengths, etc.	1.5	444 submittals	666
1717; 1704(g)	Submit with a final well schematic, description, nature and quantities of material used; relating to casing string - description of methods used, size and amount of casing and depth.	1	434 submittals	434
1721(a), (g), (h); 1704(g)	Submit the applicable information required to temporarily abandon a well for approval; after temporarily plugging a well, submit well schematic, description of remaining subsea wellheads, casing stubs, mudline suspension equipment and required information of this section; submit certification by a Registered Professional Engineer of the well abandonment design and procedures; certify design.	70 mins.	1,296 submittals	1,512
1722(a), (d); 1704(g)	Request approval to install a subsea protective device.	30 mins.	15 requests / submittals	8
	Submit a report including dates of trawling test and vessel used; plat showing trawl lines; description of operation and nets used; seafloor penetration depth; summary of results listed in this section; letter signed by witness of test.	1.5		23

1723(b); 1704(g)	Submit a request to perform work to remove casing stub, mudline equipment, and/or subsea protective covering.	20 mins.	150 requests	50
1743(a); 1704(g)	Submit signed certification; date of verification work and vessel; area surveyed; method used; results of survey including debris or statement that no objects were recover; a post-trawling plot or map showing area.	1.25	5 certifications	6
Subtotal of Subpart Q			**3,948 responses**	**3,282 hour burdens**
Total Burden			**13,541 annual responses**	**9,770 annual burden hours**
			$361,625 non-hour cost burdens	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden

We have identified one non-hour cost burden for this collection. The 30 CFR part 250 regulations require a cost recovery fee of $125 cost recovery fee (non-hour cost burden) for APM submittals. The application fee is required to recover the Federal Government's processing costs. We have not identified any other non-hour cost burdens associated with this collection of information. We estimate a total reporting non-hour cost burden of $361,625 for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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: November 22, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–28834 Filed 12–2–13; 8:45 am]

BILLING CODE 4310–VH–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DQ0000]

Notice of Resource Advisory Council Meeting for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante National Conservation Area (NCA) Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on January 22, 2014, from 3 p.m. to 6 p.m. Any adjustments to this meeting will be posted on the Dominguez-Escalante NCA Resource Management Plan Web site: *www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

ADDRESSES: The meeting will be held at the Mesa County Courthouse Annex, 544 Rood Avenue, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *cewing@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above

individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the Resource Management Plan process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness.

Topics of discussion during the meeting may include informational presentations from various resource specialists working on the Resource Management Plan as well as Council reports on the following topics: recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management and other resource management topics of interest to the Council that were raised during the planning process.

These meetings are anticipated to occur monthly, and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Council meetings, and will be published in the **Federal Register,** announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *www.blm.gov/co/st/en/nca/denca/denca_rmp.html.* These meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have time allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual, oral comments may be limited at the discretion of the chair.

John Mehlhoff,

BLM Colorado Acting State Director.

[FR Doc. 2013–28873 Filed 12–2–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14365; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Colorado. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Colorado at the address in this notice by January 2, 2014.

ADDRESSES: Sheila Goff, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO. The human remains were removed from the vicinity of Mora, in Mora County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona. The Kiowa Indian Tribe of Oklahoma and the Pueblo of Taos, New Mexico, were invited to consult but did not participate.

History and Description of the Remains

In the late 1960s or early 1970s, human remains representing, at minimum, one individual were removed from the vicinity of Mora, in Mora County, NM, by a private citizen. Sometime after 1973, he brought the human remains to the Department of Anthropology at the University of Southern Colorado. In 2000, when the University closed its anthropology lab, the remains were taken into custody by History Colorado. The individual is an adult male at least 30 years old. No known individuals were identified. No associated funerary objects are present.

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis by Dr. Catherine Gaither.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Jicarilla Apache Nation, New Mexico.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico;

Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sheila Goff, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by January 2, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, may proceed.

History Colorado is responsible for notifying the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Taos, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, that this notice has been published.

Dated: October 28, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–28928 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14288; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Natural Bridges National Monument, Moab, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Natural Bridges National Monument has completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary object and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request to Natural Bridges National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Natural Bridges National Monument at the address in this notice by January 2, 2014.

ADDRESSES: Catherine Cannon, Superintendent, Natural Bridges National Monument, HC–60 Box 1, Lake Powell, UT 84533, telephone (435) 692–1234, email *kate_cannon@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object under the control of Natural Bridges National Monument, Moab, UT. Some of the human remains are in the physical custody of the Museum of Northern Arizona, Flagstaff, AZ. The human remains and associated funerary object were removed from Natural Bridges National Monument, San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Natural Bridges National Monument.

Consultation

A detailed assessment of the human remains was made during a region-wide, multi-park process by Natural Bridges National Monument professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate: Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California);

Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

In 1937, human remains representing, at minimum, one individual were removed from site 42SA06965 in San Juan County, UT, by Charlie R. Steen during an archeological assessment and excavation. Faunal bones were taken to the Museum of Northern Arizona, in Flagstaff, AZ, where they have resided since that time. In August of 2008, the faunal material was analyzed and human remains were identified. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum, four individuals were removed from site 42SA06794 in San Juan County, UT, by Philip M. Hobler and Audry E. Hobler during an archeological survey. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum, one individual were removed from site 42SA06762 in San Juan County, UT, by Philip M. Hobler and Audry E. Hobler during an archeological survey. No known individuals were identified. No associated funerary objects are present.

In 1960 or 1961, human remains representing, at minimum, one individual were removed from site 42SA06673 in San Juan County, UT, by Philip J. Hobler accompanied by Arches National Monument park ranger Lloyd Pierson. No known individuals were identified. No associated funerary objects are present.

In 1989, human remains representing, at minimum, one individual were removed from site 42SA06845 in San Juan County, UT, by Nickens and Associates, while conducting stabilization work. No known individuals were identified. The one associated funerary object is a charcoal sample.

Determinations Made by Natural Bridges National Monument

Officials of Natural Bridges National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary object to the tribes pursuant to 16 U.S.C. 18f–2.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico & Utah.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico & Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the San Juan Southern Paiute Tribe of Arizona; Pueblo of Santa Ana, New Mexico; and Pueblo of Santa Clara, New Mexico.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary object may be to the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Catherine Cannon, Superintendent, Natural Bridges National Monument, HC–60 Box 1, Lake Powell, UT 84533, telephone (435) 692–1234, email kate_cannon@nps.gov, by January 2, 2014. After that date, if no additional requestors have come

forward, transfer of control of the human remains and associated funerary object to the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

Natural Bridges National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: October 21, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–28909 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14289: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Canyonlands National Park, Moab, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Canyonlands National Park, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Canyonlands National Park. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Canyonlands National Park at the address in this notice by January 2, 2014.

ADDRESSES: Catherine Cannon, Superintendent, Canyonlands National Park, 2282 S. West Resource Blvd., Moab, UT 84532–3298, telephone (435) 719–2101, email *kate_cannon@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Canyonlands National Park, Moab, UT. The human remains and associated funerary objects were removed from Canyonlands National Park, San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Canyonlands National Park.

Consultation

A detailed assessment of the human remains was made during a region-wide, multi-park process by Canyonlands National Park professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate: Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico;

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

In 1978, human remains representing, at minimum, one individual were removed from site 42Sa07005 in San Juan County, UT. No known individuals were identified. The 30 associated funerary objects are 3 faunal bones, 23 pumpkin fragments, 1 grass stalk, 1 shell bead, and 2 chert flakes.

In 1984, human remains representing, at minimum, one individual were removed from site 42Sa08506 in San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Canyonlands National Park

Officials of Canyonlands National Park have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 30 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary objects to the tribes pursuant to 16 U.S.C. 18f–2.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico & Utah.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico & Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the San Juan Southern Paiute Tribe of Arizona; Pueblo of Santa Ana, New Mexico; and Pueblo of Santa Clara, New Mexico.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Catherine Cannon, Superintendent, Canyonlands National Park, 2282 S. West Resource Blvd., Moab, UT 84532–3298, telephone (435) 719–2101, email *kate_cannon@nps.gov,* by January 2, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

Canyonlands National Park is responsible for notifying the The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: October 21, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–28910 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14190: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Reno, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the BLM at the address in this notice by January 2, 2014.

ADDRESSES: Paul E. Podborny, Field Manager, Schell Field Office, HC 33 Box 33500, Ely, NV 98301, telephone (775) 289–1868, email *ppodborny@blm.gov;* K. Renee Barlow, Archaeologist/Cultural Resource Specialist, Schell Field Office, HC 33 Box 33500, Ely, NV 98301,

telephone (775) 289–1849, email *kbarlow@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, Reno, NV. The human remains were removed from the Snake Creek Indian Burial Cave, in White Pine County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by BLM Schell Field Office professional staff in consultation with representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

History and Description of the Remains

In March, 1980, human remains representing, at minimum, one individual were removed legally from the Snake Creek Indian Burial Cave (site 26WP23) in White Pine County, NV. The BLM Schell Field Office archeologist was monitoring the cave and identified three human bone fragments on the surface below the mouth of the cave, which he felt could possibly be disturbed by recreational caving activities. He collected the remains and sent them to the Nevada State Museum. These remains are cataloged as AHUR 6003 and represent one adult, possibly male. No known individuals were identified. No associated funerary objects were present or observed in association with the human remains.

The burial site is located in a solution karst, or cave with several connected underground chambers and a vertical entrance that requires rappelling in from the ground surface. Entering the cave requires a drop of about 35 feet into the main chamber, and as a result it has been a natural trap for animals since the Pleistocene period. The remains of ice age camel, horse, wolverine, badger, marten, wolf and other locally extinct fauna along with wood and other organic material were recovered from the cave by paleontological research conducted between 1984 and 1988, i.e. after the removal of the human remains reported in this notice. The dates obtained for the extinct horse bones, as well as wood and bat guano, were, respectively, approximately 15,100 BP, 9460 BP, and 7860 BP (Mead and Mead 1989, 1985).

Archeologists in the early to mid-1900s noted cultural materials in the cave and on the ground outside the mouth of the cave. Those materials, including a ladder and pottery, were identified by archeologists in the 1930s and 1950s as ''Puebloan,'' or likely associated with the Formative period, which includes several nearby sites now known to be large habitation sites associated with the Fremont culture. However, these artifacts have not been re-located, and were not found in association with the human remains reported here.

The cave is located in Shoshone, Western Shoshone, or Niwi Territory, adjacent to a historic Shoshone community in an area near the Nevada-Utah border used traditionally by Shoshone and Goshute peoples (Steward 1938). In addition, the cave was also used historically as a burial place by Goshute and/or Shoshone people. Wheeler (1938) concluded that the cave was a Shoshone burial site, as a ''cone'' of human remains of Shoshone individuals and their belongings was located immediately below the opening of the cave. Ms. Laura Stark Rainey, a member of the Ely Shoshone Tribe of Nevada, whose uncle lived in Garrison, Utah, relates that the uncle told her that he drove away two archeologists who were removing bodies from the cave and taking everything out of the cave. She believes that this incident occurred circa 1930s (personal communication 2013). Ms. Rainey further reports her uncle as saying he thought the archeologists came back later and removed additional bodies when he wasn't watching. A member of the Cedar Band of Paiute Indians, Ms. Kathleen Gondor remembers her grandfather or great-grandfather saying that the cave was where they buried the last Shoshone or Goshute Chief (personal communication 2013). In addition, representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Ely Shoshone Tribe of Nevada; and the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada, have previously indicated that the cave is a sacred place, and a prehistoric burial site (Molenaar 2010).

The overall condition of the human remains, comparisons with past descriptions of human remains in the cave, the context and removal of these bones from the surface of the cave by a BLM archaeologist in 1980, and recommendations made by the archeologist at the time of removal indicate a likely time of deposition and method of burial consistent with the traditional burial practices of Shoshone people.

Determinations Made by the BLM Nevada State Office

Officials of the BLM Nevada State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Ely Shoshone Tribe of Nevada; and the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Paul E. Podborny, Field Manager, Schell Field Office, HC 33 Box 33500, Ely, NV 98301, telephone (775) 289–1868, email *ppodborny@blm.gov,* by January 2, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Ely Shoshone Tribe of Nevada; and the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada, may proceed.

The BLM Nevada State Office is responsible for notifying the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada that this notice has been published.

Dated: September 26, 2013.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–28927 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14366; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State Police, Houghton Lake Post, Houghton Lake, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Michigan State Police, Houghton Lake Post has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Michigan State Police, Houghton Lake Post. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Michigan State Police at the address in this notice by January 2, 2014.

ADDRESSES: D/Sgt Katherine Trietch, 9011 W Lake City Road, Houghton Lake, MI 48629, telephone (989) 422–6923, email *trietchk@michigan.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Michigan State Police, Houghton Lake Post, Houghton Lake, MI. The human remains were removed from an unknown location in Saginaw County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Michigan State Police professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan.

History and Description of the Remains

At an unknown date prior to June 2001, human remains representing, at minimum, three individuals were removed from an unknown location in Saginaw County, MI. The remains were collected during road construction in Saginaw County by a private citizen and stored in a garage. The private citizen's daughter reported that her father collected the remains when she was a little girl. No known individuals were identified. No associated funerary objects were present. The Michigan State University Anthropology Lab determined through investigative, forensic means that the remains are ''Pre-modern Native American,'' and represent one adult and at least two juveniles. The location the remains were found is near the current location of the Saginaw Chippewa Indian Tribe of Michigan. Based on geographic location and consultation, the remains are most likely the remains of a member of that tribe.

Determinations Made by the Michigan State Police

Officials of the Michigan State Police have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and Saginaw Chippewa Indian Tribe of Michigan.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to D/Sgt Katherine Trietch; 9011 W Lake City Road, Houghton Lake, MI 48629, telephone (989) 422–6923, email *trietchk@michigan.gov*, by January 2, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Saginaw Chippewa Indian Tribe of Michigan may proceed.

The Michigan State Police is responsible for notifying the Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: October 28, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–28916 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14202: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Colorado State University, Fort Collins, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Colorado State University (CSU) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any

present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to CSU Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Department of Anthropology at CSU at the address in this notice by January 2, 2014.

ADDRESSES: Christopher Green, Colorado State University, B–218 Clark Building, c/o Christopher Green, 1787 Campus Delivery, Fort Collins, CO 80525, telephone (970) 213–3060, email *cg99@rams.colostate.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Colorado State University (CSU), Fort Collins, Colorado. The human remains and associated funerary objects were removed from Larimer, Weld, Logan, Adams, Douglas, Cheyenne, Archuleta, and Montezuma Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the CSU professional staff in consultation with representatives of Arapaho Tribe of Wind River Reservation; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah. The following tribes were invited to consult but did not participate: Crow Tribe of Montana; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)(formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Pawnee Nation of Oklahoma; Pueblo of Cochiti, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Shoshone Tribe of Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation; Standing Rock Sioux Tribe of North and South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

Sometime before or during 1968, human remains representing, at minimum, four individuals were removed from an unknown site in Larimer County, CO. The remains were catalogued and curated by CSU sometime after 1968. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding these individuals. Cases # 22, 23, 24, and 25 represent the partial remains of at least four individuals, including two adults and two newborns. No known individuals were identified. No associated funerary objects are present.

Sometime before or during 1968, human remains representing, at minimum, two individuals were removed from an unknown site described as ''near Ted's Place,'' which is near where the Cache La Poudre River emerges from the Rocky Mountains in Larimer County, CO. The remains were catalogued and curated by CSU sometime after 1968. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding these individuals. Cases # 26 and 27 represent the partial remains of at least two individuals, both adults. No known individuals were identified. No associated funerary objects are present.

Sometime before or during 1970, human remains representing, at minimum, one individual were removed from an unknown site in Larimer County, CO. According to collection notes, the site of removal was on private property. The remains were catalogued and curated by CSU sometime after 1970. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding this individual. Case # 49 represents the partial remains of one adult. No known individuals were identified. No associated funerary objects are present.

Sometime before or during 1970, human remains representing, at minimum, one individual were removed from an unknown site in Larimer County, CO. The skeletal remains were found by a resident of the Estes Park area, indicating the site may have been near there. The remains were catalogued and curated by CSU sometime after 1970. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding this individual. Case # 51 represents the remains of one adult male. No known individuals were identified. No associated funerary objects are present.

Sometime during August 1971, human remains representing, at minimum, one individual were removed from site 5LR203 in Larimer County, CO. The site was discovered and excavated by Dr. Elizabeth Ann Morris and her students in 1971. Case # 67 represents one individual that was discovered in a sandstone crevice near Livermore, CO, with two other individuals. On September 27, 1971, some of the human remains were removed from CSU during a social protest by individuals presumably associated with the American Indian Movement. Following the protest, only portions of one individual remained at CSU. No known individuals were identified. No associated funerary objects are present.

Sometime between 1976 and 1979, human remains representing, at minimum, two individuals were removed from private property on Lightening Hill (site 5LR284) in Larimer County, CO. The site was discovered and excavated by the CSU Archaeological Field School, under the

direction of Dr. Elizabeth Ann Morris. CSU excavated a campsite, including the double burial, between 1976 and 1979. The artifacts from the campsite remain housed in the CSU Archaeological Repository. Cases # 68 and 69 represent the remains of one adult female and one adult male. The female was found lying on her back in a burial pit with her head oriented north. The male was found in a small pit, but appears to be a secondary burial. No known individuals were identified. The three associated funerary objects are two large shell pendants and 1 lot of bone beads buried with the adult female remains.

Sometime during 1975, human remains representing, at minimum, three individuals were removed from private property (site 5LR300) in Larimer County, CO. The site was recorded on October 18, 1975, by Dr. Michael Charney, Chris Arthur, Anne McNamara, Penny Price, and Bob Burgess, all CSU faculty and student. Cases # 61, 62, and 63 represent at least three partial individuals found in a small crevice in the foothills near the Cache la Poudre River. No known individuals were identified. No associated funerary objects are present, although animal bone and a projectile point were collected, but are not associated, with the human remains.

Sometime between 1992 and 1993, human remains representing, at minimum, one individual were removed from private property (site 5LR1680) in Larimer County, CO. The collection from this site is curated by the CSU Archaeological Repository. The skeletal remains were discovered during a routine analysis of the collection by CSU researchers. Case # 65 represents one partial individual mixed with bison bone. No known individuals were identified. The site consisted nearly exclusively of bison bone, though chipped stone flakes, tools, and pottery were found intermixed with the bison bone, but are not considered associated funerary objects. It is not known how the skeletal remains became mixed with the bison bone, but the site does not appear to be a complete burial. No associated funerary objects are present.

During May 1979, human remains representing, at minimum, one individual were removed from private property (site 5LR170) in Larimer County, CO. The CSU Archaeological Field School excavated the site during the 1979 field season, under the direction of Dr. Elizabeth Ann Morris. The artifacts from this site remain housed in the CSU Archaeological Repository. Case # 66 represents the partial remains of one individual. No known individuals were identified. No associated funerary objects are present, although lithic flakes and rock were collected, but are not associated, with the human remains. The site contains camp debris associated with a long period of occupation and radiocarbon dates of non-human organic material in the shelter date the site to 800 B.C. to 500 B.C.

Sometime before August 1991, human remains representing, at minimum, one individual were removed from the Masonville site in Larimer County, CO. The remains were curated by CSU sometime before August 1991. Dr. Diane France (formerly of CSU) consulted on this burial after discovery, although it is not known if it was with the Larimer County Sheriff's Department or some other agency. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any additional documentation regarding this individual. Case # 79 represents the partial remains of one sub-adult. No known individuals were identified. No associated funerary objects are present.

Possibly on June 19, 1986, human remains representing, at minimum, two individuals were removed from the Freauff site in Weld County, CO. The remains were catalogued and curated by CSU sometime after 1987. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any additional documentation regarding these individuals. Cases # 58 and 59 represent the remains of two individuals, one possibly female and one possibly a juvenile male. No known individuals were identified. Animal bone, fire altered rock, rock, lithic debitage, olivella shell, freshwater shell, shell fragment were collected with the skeletal remains, but are not considered associated funerary objects. No associated funerary objects are present.

Sometime before August 1991, human remains representing, at minimum, one individual were removed from the Adams site in Adams County, CO. The remains were catalogued and curated by CSU sometime before August 1991. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding this individual. Case # 70 represents the partial remains of one adult. No known individuals were identified. No associated funerary objects are present, although bone tubular beads, animal bone preforms, dentalium shell, animal teeth, assorted animal bones, awl tips, ground stone fragment, chert drill tip were stored, but are not associated, with the human remains.

On May 7, 1982, human remains representing, at minimum, one individual were removed from the Hobbes-Artzer site in Logan County, CO. The burial was discovered by private citizens (likely Lloyd Hobbes and/or John Greg Artzer), and was excavated from an eroding context by Dr. Elizabeth Ann Morris, students, and citizens on May 7, 1982. The remains were catalogued and curated by CSU sometime after 1982. Case # 77 represents the partial remains of one individual. No known individuals were identified. The collection records suggest at least two burials were present at the site, but only partial remains are at CSU. No associated funerary objects are present.

In May of 1984, human remains representing, at minimum, one individual were removed from East Flat Top/Whiskey Draw site in Logan County, CO. The burial was discovered by private citizens and was excavated from an eroding context by Dr. Elizabeth Ann Morris, students, and citizens in May 1984. The remains were catalogued and curated by CSU sometime after 1984. Case # 56 represents the partial remains of one adult female, buried in a tightly flexed position within a burial pit, head oriented toward the north. The burial appears to be a primary burial. No known individuals were identified. No associated funerary objects are present, although animal bones were stored, but are not associated, with the human remains. Known associated funerary objects are not under the control of CSU, although collection records describe a bison cranium, bone awl, biface, side scrapers, end scraper, large flakes, and a lap stone were collected with the human remains. The location of these artifacts is unknown.

During April 1985, human remains representing, at minimum, one individual were removed from private property at the Red Lion site in Logan County, CO. The burial was discovered by private citizens and was excavated from an agricultural context by Dr. Elizabeth Ann Morris and citizens. The remains were catalogued and curated by CSU after 1985. Case # 57 represents the remains of one young adult male. The burial appears to have been placed in a pit, although the bones were disarticulated and appear to have been covered in red ochre. The burial possibly could have been a secondary burial, placed into a pit. The one associated funerary object is a marine shell pendant (abalone) with two brass tacks. According to collection records, deer bone was found with the burial and

interpreted as a possible food offering, but is not present in the collection.

On May 5, 1979, human remains representing, at minimum, one individual were removed from private property at the Linville site in Douglas County, CO. The remains were discovered by Kevin Linville, private citizen, in 1975. CSU was notified of the discovery in 1979, and Dr. Elizabeth Ann Morris, CSU students, and citizens excavated the site in an eroding context on May 5, 1979. Case # 60 represents the remains of one older adult male, buried in a tightly flexed position, on his back, with his head placed to the north. The knees were drawn to the head with the left hand under the skull. No known individuals were identified. No associated funerary objects are present, although collection records indicate a grinding hand stone was interred with the burial. The location of the artifact is unknown.

Sometime before or during 1970, human remains representing, at minimum, one individual were removed from an unknown site in Cheyenne County, CO. The remains were catalogued and curated by CSU sometime after 1970. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding this individual. Case # 50 represents the partial remains of one adult male. No known individuals were identified. No associated funerary objects are present, although burned and unburned animal bone, late prehistoric arrow points, and biface fragments were stored, but are not associated, with the human remains. The arrow points date the site to the late prehistoric era between 150 A.D. and 1540 A.D.

Sometime before or during 1976, human remains representing, at minimum, one individual were removed from an unknown site in the area of Navajo Reservoir in Archuleta County, CO. The remains were catalogued and curated by CSU sometime after 1976. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding this individual. Case # 54 represents the remains of one adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

Sometime before or during 1969, human remains representing, at minimum, one individual were removed from an unknown site in Montezuma County, CO. The remains were catalogued and curated by CSU sometime after 1969. Collection and archival work by Dr. Jason LaBelle and Dr. Ann Magennis, between 2005 and 2010, failed to find any documentation regarding this individual. Case # 32 represents the partial remains of one adult that exhibits occipital flattening. No known individuals were identified. No associated funerary objects are present, although southwestern ceramic sherds (including corrugated, plain, and painted forms that have been identified as San Juan orange wears), Corrugated wares, and possibly smooth obliterated wares, as well as lithic debitage flakes and rock fragments were stored, but are not associated, with the human remains.

Determinations Made by Colorado State University

Officials of Colorado State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their prehistoric provenience in the state of Colorado, as well as data indicating Native American burial practice and the relative condition of the skeletal remains.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 27 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of Wind River Reservation, Wyoming; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of Wind River Reservation, Wyoming; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains and associated funerary objects may be to the Arapaho Tribe of Wind River Reservation, Wyoming; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Christopher Green, Colorado State University, B–218 Clark Building, c/o Christopher Green, 1787 Campus Delivery, Fort Collins, CO 80525, telephone (970) 213–3060, email *cg99@rams.colostate.edu,* by January 2, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Arapaho Tribe of Wind River Reservation, Wyoming; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah may proceed.

Colorado State University is responsible for notifying the Arapaho Tribe of Wind River Reservation; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Navajo Nation, Arizona, New Mexico, & Utah; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah that this notice has been published.

Dated: September 26, 2013.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–28911 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14381; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Denver Art Museum, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Denver Art Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Denver Art Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Denver Art Museum at the address in this notice by January 2, 2014.

ADDRESSES: John P. Lukavic, Ph.D., Denver Art Museum, 100 W 14th Avenue Parkway, Denver, CO 80204, telephone (720) 913–0160, email *JLukavic@denverartmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Denver Art Museum, Denver, CO, that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1903, one cultural item was removed from the Pueblo of Laguna in Cibola, Valencia, Bernalillo and Sandoval counties, NM. One other cultural item is believed to have been removed from the same community at the same time. These two items were collected by Stewart Culin, the first curator that collected American Indian items for the Brooklyn Museum. The Denver Art Museum subsequently acquired the two items from the Brooklyn Museum through an exchange in 1948. The items are two Katsina Friends and meet the definition of both objects of cultural patrimony and sacred objects.

The review of available documentation, in addition to physical inspections by multiple Pueblo of Laguna delegations, has resulted in confirmation from Pueblo of Laguna religious leaders that the two Katsina Friends are of Pueblo of Laguna origin. The Pueblo of Laguna asserts that a relationship of shared group identity exists between the Pueblo of Laguna in 1903, and the present-day Pueblo of Laguna. These Katsina Friends were created within the Pueblo of Laguna religious system with construction techniques still used today. In addition to the positive identification by Laguna religious leaders that the two Katsina Friends are of Laguna Pueblo origin, cultural affiliation with the Pueblo of Laguna is evident by a variety of diagnostic features. The catalog cards also associate these two items with ''Laguna.''

Determinations Made by the Denver Art Museum

Officials of the Denver Art Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Pueblo of Laguna, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to John P. Lukavic, Ph.D., Denver Art Museum, 100 W 14th Avenue Pkwy, Denver, CO 80204, telephone (720) 913–0160, email *JLukavic@denverartmuseum.org,* by January 2, 2014. After that date, if no additional claimants have come forward, transfer of control of the sacred objects and objects of cultural patrimony to Pueblo of Laguna, New Mexico may proceed.

The Denver Art Museum is responsible for notifying the Pueblo of Laguna that this notice has been published.

Dated: October 30, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–28929 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14191; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Alaska State Office, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these items should submit a written request to the BLM Alaska State Office. If no additional claimants come forward, transfer of control of the items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these items should submit a written request with information in support of the claim to the BLM Alaska State Office at the address in this notice by January 2, 2014.

ADDRESSES: Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box

13, Anchorage, AK 99513–7599, telephone (907) 271–5510.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate items under the control of the BLM Alaska State Office and in the physical custody of the American Museum of Natural History, New York, NY, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Items

Between 1931 and 1932, 86 partial sets of polar bear skulls were removed from the vicinity of the ''Kukulik'' Eskimo burial mound (also spelled ''Kookoolik''), about four miles east of the village of Savoonga, on St. Lawrence Island, AK. Surviving records report that at least one skull was recovered from a depth of ''3 feet and nine inches, but on clay bottom, associated with objects of the Old Bering Sea culture.'' The excavation was done by, or under authority of, Dr. Otto Geist, who was affiliated with the Alaska Agricultural College and School of Mines (today called the University of Alaska, Fairbanks, AK). No human remains or other items are known to have been removed during this excavation. At an unknown date after 1932, these polar bear skulls were sent to the American Museum of Natural History, New York, NY (AMNH).

In 1957, one partial polar bear skull was removed from the vicinity of the same ''Kukulik'' Eskimo burial mound (also spelled ''Kookoolik''), about four miles east of the village of Savoonga on St. Lawrence Island, AK. The excavation was done by, or under authority of, Dr. Otto Geist, whose affiliation was then reported as the University of Alaska at Fairbanks, AK. No human remains or other items are known to have been removed during this excavation. At an unknown date after 1957, this polar bear skull was sent to the AMNH.

Between 1931 and 1947, 204 partial sets of animal bones were likely removed from the vicinity of human burials on St. Lawrence Island, AK, by Dr. Otto Geist or under his authority. At the time, Dr. Geist was associated with the Alaska Agricultural College and School of Mines (today called the University of Alaska in Fairbanks, AK). Dr. Geist was also associated during some or all of this time with the University of Alaska Museum of the North at Fairbanks, AK. The 204 partial sets of animal remains include 200 partial polar bear skulls, two dog skulls, and two post cranial dog skeletons lacking skulls. Between 1931 and 1947, these animal bones were sent to the AMNH.

Dr. Geist's records at the AMNH state that some of the polar bear skulls came from surface contexts and others from subsurface contexts. As no records identify the specific provenience for each specimen, the exact numbers of surface-collected and subsurface-collected specimens are unknown. Of the 291 sets of animal bones listed in this notice, those found on the surface are approximately one or two centuries old. If they were any older, natural erosion from freeze-thaw action and consumption by animals would have destroyed them. The specimens found in buried contexts, including at least one partial polar bear skull was found at a depth of three feet and nine inches below the surface, may reasonably be connected to the Old Bering Sea culture of the region, and date from about 200 B.C. to 500 A.D.

Ethnohistorical and genetic data indicate a continuity of cultural occupation of St. Lawrence Island from at approximately 300 A.D. to the present. Historical accounts and oral tradition presented by representatives of the Native Village of Gambell and the Native Village of Savoonga support this evidence for occupation, as well as the custom of placing polar bear skulls and dog remains at or near human graves. Based on the provenience, type, and condition of the animal remains, they are directly associated with Native American inhabitants of St. Lawrence Island. Descendants of these inhabitants are members of the Native Village of Gambell and the Native Village of Savoonga, who have made a joint request for these animal bones.

Determinations Made by the BLM Alaska State Office

Officials of the BLM Alaska State Office have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 291 items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony; the human remains are not in the possession or control of the BLM Alaska State Office; and the items can be identified by a preponderance of the evidence to have been removed from the specific burial sites of Native American individuals culturally affiliated with a particular Indian tribe.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the items and the Native Village of Gambell and the Native Village of Savoonga.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these items should submit a written request with information in support of the claim to Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, by January 2, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Native Village of Gambell and the Native Village of Savoonga may proceed.

The BLM Alaska State Office is responsible for notifying the Native Village of Gambell and the Native Village of Savoonga that this notice has been published.

Dated: September 26, 2013.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–28913 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14192; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Alaska State Office, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these items should submit a written request to the BLM Alaska State

Office. If no additional claimants come forward, transfer of control of the items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these items should submit a written request with information in support of the claim to the BLM Alaska State Office at the address in this notice by January 2, 2014.

ADDRESSES: Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate items under the control of the BLM Alaska State Office and in the physical custody of the American Museum of Natural History, New York, NY, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Items

On an unknown date in 1947 or prior to 1947, 89 polar bear skulls were collected by, or under the authority of, Dr. Otto Geist, whose affiliation was then reported as the University of Alaska at Fairbanks. These items were accessioned by the American Museum of Natural History, New York, NY (AMNH), in 1947. AMNH catalog records indicate that these remains were collected from ''Cape Chibulak.'' An examination of records at the AMNH in 2011 led officials there to conclude that ''most, if not all of the remains from Cape Chibulak came from the grave of Kowarin.'' Additional records at the AMNH indicate that these remains were removed from the surface of the grave of ''a hunter, Kowarin,'' which Geist reports was located ''on the sandspit just above the rim of the freshwater lake at Cape Chibulak,'' near the village of Gambell on St. Lawrence Island, AK. Dr. Geist also reported in his records that he collected ''polar bear, reindeer and dog skulls'' from this burial location. The AMNH does not have any of the reindeer remains. Geist's surviving correspondence at the AMNH reports that Kowarin was a ''Siberian Yuit, whose sons Booshy, Otiyohok, Koonuka and Okinilloo are quite old but still living [in 1947].'' Dr. Geist also reported that the grave of Kowarin had been ''ransacked'' for ''souvenirs'' and that his remains had been removed. Dr. Geist recorded that ''after considerable consultation I was permitted to remove all of the specimens'' with the son Otiyohok helping him remove ''all of the skulls.'' Records at the AMNH indicate that at least one box of polar bear remains that were removed from this gravesite were received by the AMNH. Further, one polar bear skull has the name ''Kowarin'' written on the skull.

Genealogical, historical, and oral history research conducted during 2011–2013 by the BLM, including with tribal members and lineal descendants of Quwaaren living on St. Lawrence Island, resulted in additional information on ''Kowarin'' and his family. Today, the recognized Siberian Yupik spelling of ''Kowarin'' is Quwaaren. A respected hunter and whaler, Quwaaren was born about 1844, probably in Siberia. By the second half of the 19th century, he was living on St. Lawrence Island, where his children were born. Both Quwaaren and his wife Avaltuk, whom he married about 1870, died on St. Lawrence Island in the 1910s and were buried there. They had a total of nine children of whom four appear to have died as children or young adults and without descendants. The five surviving children of Quwaaren and Avaltuk were five sons: Pusaa (also known as Bushu and Booshu) (1875–1957); Ataayaghhaq (also known as Attiahok and Jimmy/Jimmie Otiyohok) (1877–1965); Kanuka (also known as Tommy Koonooka) (1879–1970); Aghnilu (also known as Peter Okinello) (1881–1971); and Tatuwi (also known as Morris Tatoowi) (1891–after 1940). In addition, Elders of St. Lawrence Island identified Qisgena (older spelling Kashunga and Qesgenga) (1862–after 1930), the wife of Suluk (1860–ca. 1930), as a sister to Quwaaren's sons. Thus, Qisgena likely was the natural or adopted daughter of Quwaaren. Research by BLM has established that at least five of these six children of Quwaaren have living descendants on St. Lawrence Island and elsewhere today.

Determinations Made by the BLM Alaska State Office

Officials of the BLM Alaska State Office have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 89 items described above are reasonably believed to have been placed with or near the individual human remains of ''Kowarin'' (Quwaaren) at the time of his death in the 1910s or later as part of the death rite or ceremony; the remains of Quwaaren are not in the possession or control of the BLM Alaska State Office; and the items can be identified, by a preponderance of the evidence, as related to the human remains of Quwaaren, a Native American Individual.
- Pursuant to 25 U.S.C. 3005(a)(5)(A), known living descendants of Quwaaren on St. Lawrence Island and elsewhere are the direct lineal descendant of the individual who was buried with these objects.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these items should submit a written request with information in support of the claim to Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, by January 2, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the known lineal descendants of Quwaaren may proceed.

The BLM Alaska State Office is responsible for notifying the known descendants of Quwaaren, the Native Village of Gambell, and the Native Village of Savoonga that this notice has been published.

Dated: September 26, 2013.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–28918 Filed 12–2–13; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–885]

Certain Portable Electronic Communications Devices, Including Mobile Phones and Components Thereof; Commission Determination Not To Review an Initial Determination Granting Google, Inc.'s Motion To Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 14) of the presiding administrative law judge (''ALJ'') granting Google, Inc.'s motion to intervene.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on June 26, 2013, based on a complaint filed by Nokia Corporation of Espoo, Finland and Nokia Inc., of Sunnyvale, California (collectively, ''Nokia''). The complaint, as supplemented, alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,035,189 (''the '189 patent''); 6,373,345; 6,711,211 (''the '211 patent''); 7,187,945; 8,140,650 (''the '650 patent''); and 8,363,824. 78 *FR* 38362 (Jun. 26, 2013). The respondents are HTC Corporation of Taoyuan City, Taiwan, and HTC America, Inc. of Bellevue, Washington (collectively, ''HTC''). Subsequently, third party Google Inc. (''Google'') intervened as a party in this investigation with respect to three of the six patents, namely the '189, '211 and '650 patents. 78 *FR* 49764 Aug. 15, 2013). The complaint was amended to add U.S. Patent No. 7,366,529 (''the '529 patent'') and to add Nokia's recently launched domestic industry products. 78 *FR* 56737 (Sept. 13, 2013).

On September 17, 2013, Google filed a motion to intervene as a party in this investigation with respect to the '529 patent. The motion states that respondents HTC do not oppose the motion. On September 27, 2013, complainants Nokia filed a response to Google's motion.

On October 31, 2013, the ALJ issued an ID (Order No. 14) granting Google's motion. No party petitioned for review of the ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Issued: November 26, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–28794 Filed 12–2–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on October 31, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Informative Graphics Corporation, Scottsdale, AZ, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on April 19, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 10, 2013 (78 FR 27431).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–28844 Filed 12–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on October 25, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Instem LSS Ltd., Stone, Staffordshire, UNITED KINGDOM; Databiology Ltd., Oxford, Oxfordshire, UNITED KINGDOM; and Nick Trigg (Individual), Didcot, Oxfordshire, UNITED KINGDOM, have been added as parties to this venture.

Also, Constellation Technologies, Didcot, Oxfordshire, UNITED KINGDOM; and Perkin Elmer (Individual), Boston, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on August 6, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 10, 2013 (78 FR 55296).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–28843 Filed 12–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice: Request for information and invitation to comment.

SUMMARY: This notice is a request for information and/or comment on reports issued by the Bureau of International Labor Affairs (ILAB) September 30, 2013, regarding child labor and forced labor in foreign countries. Relevant information will be used by the Department of Labor (DOL) in preparation of its ongoing reporting under Congressional mandates and Presidential directive. In addition, ILAB will use relevant information to conduct assessments of each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years.

DATES: Submitters of information are requested to provide their submission to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) at the email or physical address below by 5 p.m. January 15, 2014.

To Submit Information: Information submitted to DOL should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll free number). Comments, identified as ''Docket No. DOL–2013–0003'' may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.

Facsimile (fax): OCFT at 202–693–4830.

Mail, Express Delivery, Hand Delivery, and Messenger Service (1 copy): Tina McCarter and Randall Hicks at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue NW., Room S–5317, Washington, DC 20210.

Email: Email submissions should be addressed to both Tina McCarter (*McCarter.Tina@dol.gov*) and Randall Hicks (*Hicks.Randall.G@dol.gov*).

FOR FURTHER INFORMATION CONTACT: Tina McCarter and Randall Hicks (see contact information above).

SUPPLEMENTARY INFORMATION:

I. Section 105(b)(1) of the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), directed the Secretary of Labor, acting through ILAB, to ''develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards'' (TVPRA List).

Pursuant to this mandate, in December 2007 DOL published in the **Federal Register** a set of procedural guidelines that ILAB follows in developing the TVPRA List (72 FR 73374). The guidelines set forth the criteria by which information is evaluated; established procedures for public submission of information to be considered by ILAB; and identified the process ILAB follows in maintaining and updating the List after its initial publication.

ILAB published its first TVPRA List on September 30, 2009, and has issued updates in 2010, 2011, 2012, and 2013. This List is updated periodically as additional countries and territories are researched and new information for countries and territories already reviewed is evaluated. For a copy of the 2013 TVPRA List, Frequently Asked Questions, and other materials relating to the TVPRA List, see ILAB's TVPRA Web page at *http://www.dol.gov/ILAB/programs/ocft/tvpra.htm.*

II. Executive Order No. 13126 (E.O. 13126) declared that it was ''the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to E.O. 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a final list of products (''E.O. List''), identified by country of origin, that the Department, in consultation and cooperation with the Departments of State (DOS) and Treasury [relevant responsibilities now within the Department of Homeland Security (DHS)], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). In addition to the List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor,'' which provide for maintaining, reviewing, and, as appropriate, revising the EO List (66 FR 5351).

Pursuant to Sections D through G of the Procedural Guidelines, the EO List may be updated through consideration of submissions by individuals or through OCFT's own initiative.

DOL has officially revised the EO List four times, most recently on July 23, 2013, each time after public notice and comment as well as consultation with DOS and DHS.

The current EO List, Procedural Guidelines, and related information can be accessed on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm.*

III. The Trade and Development Act of 2000 (TDA), Public Law 106–200 (2002), established a new eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP), Caribbean Basin Trade and Partnership Act (CBTPA), and Africa Growth and Opportunity Act (AGOA). The TDA amends the GSP reporting requirements of Section 504 of the Trade Act of 1974, 19 U.S.C. 2464, to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.'' Title II of the TDA and the TDA Conference Report, Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.Sess. (2000), indicate that the same criterion applies for the receipt of benefits under CBTPA and AGOA, respectively.

In addition, the Andean Trade Preference Act, as amended and expanded by the Andean Trade Promotion and Drug Eradication Act, Public Law 107–210, Title XXXI (2002), includes as a criterion for receiving benefits ''[w]hether the country has implemented its commitments to eliminate the worst forms of child labor as defined in section 507(6) of the Trade Act of 1974.'' DOL fulfills these reporting mandates through annual publication of the U.S. Department of Labor's Findings on the Worst Forms of

Child Labor with respect to countries eligible for the aforementioned programs. The 2012 report and additional background information are available on the Internet at *http://www.dol.gov/ILAB/programs/ocft/tda.htm*.

Information Requested and Invitation to Comment: Interested parties are invited to comment and provide information regarding DOL's 2012 TDA Report; the 2013 TVPRA List; and the current E.O. 13126 List, all of which may be found on the Internet at *http://www.dol.gov/ilab/programs/ocft/research.htm* or obtained from OCFT. DOL requests comments or information to update the findings and suggestions for government action for countries reviewed in the TDA Report, as well as to assess each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years. For more information on the types of issues covered in the TDA Report, please see Appendix II of the report. In addition, DOL especially appreciates information on the nature and extent of child labor, forced labor, and forced or indentured child labor in the production of goods in foreign countries as well as information on government, industry, or third-party actions to address these issues for countries reviewed for the E.O. and TVPRA lists. Materials submitted should be confined to the specific topics of these reports. DOL will generally consider sources with dates up to five years old (i.e., data not older than January 1, 2008). DOL appreciates the extent to which submissions clearly indicate the time period to which they apply. In the interest of transparency, classified information will not be accepted. Where applicable, information submitted should indicate its source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Please see the 2012 TDA Report, 2013 TVPRA List, and E.O. List for a complete explanation of relevant terms, definitions, and reporting guidelines employed by DOL.

This notice is a general solicitation of comments from the public.

Signed at Washington, DC, this 21st day of November 2013.

Carol Pier,

Acting Deputy Undersecretary for International Affairs.

[FR Doc. 2013–28839 Filed 12–2–13; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Wage and Hour Division

[OMB Control No.: 1235–0015]

Proposed Revision and Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to revise and extend Office of Management and Budget (OMB) approval of the Information Collection: Report of Construction Contractor's Wage Rates. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 3, 2014.

ADDRESSES: You may submit comments identified by Control Number 1235–0015, by either one of the following methods:

Email: WHDPRAComments@dol.gov;

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretations, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice must be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Davis-Bacon Act (40 U.S.C. 3141, *et seq.*) provides, in part, that every contract in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair, which requires or involves the employment of mechanics and/or laborers, shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics that were determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State where the work is to be performed. The Administrator of the Wage and Hour Division, through a delegation of authority, is responsible for issuing these wage determinations (WDs). Section 1.3 of Regulations 29 CFR Part 1, Procedures for Predetermination of Wage Rates, provides, in part, that for the purpose of making WDs, the Administrator will conduct a continuing program for obtaining and compiling wage rate information. Form WD–10 is used to determine locally prevailing wages under the Davis-Bacon and Related Acts. The wage data collection is a primary source of information and is essential to the determination of prevailing wages. This information

collection is currently approved for use through March, 2014.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The DOL seeks approval for the extension of this information collection in order to ensure effective administration of various special employment programs.

Type of Review: Revision and Extension.

Agency: Wage and Hour Division.

Title: Report of Construction Contractor's Wage Rates.

OMB Numbers: 1235–0015.

Affected Public: Businesses or other for-profits, Federal Government.

Respondents: 22,000.

Total Annual Responses: 66,000.

Estimated Total Burden Hours: 22,000.

Estimated Time Per Response: DOL estimates that respondents spend an average of approximately 20 minutes completing each response.

Frequency: On occasion.

Total Burden Costs: $529,980.

Total Burden Costs (operation/maintenance): $0.

Dated: November 26, 2013.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretations.

[FR Doc. 2013–28882 Filed 12–2–13; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

RIN 1235–0001

Proposed Extension of the Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice and request for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 3, 2014.

ADDRESSES: You may submit comments identified by Control Number 1235–0001, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.,* which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206; 207; 211; 212. Section 11(d) of the FLSA authorizes the Secretary of Labor to regulate, restrict or prohibit industrial homework as necessary to prevent circumvention or evasion of the minimum wage requirements of the Act. 29 U.S.C. 211(d). The Department of Labor (DOL) restricts homework in seven industries (i.e., knitted outwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, and embroideries) to those employers who obtain certificates. See 29 CFR 530.1–.2. The DOL may also issue individual certificates in any industry for an individual homeworker who is unable to leave home because of a disability [or must remain at home to care for a person with a disability in the home.] See 29 CFR 530.3–.4. The DOL allows employers to obtain general (employer) certificates to employ homeworkers in all restricted industries, except women's apparel and hazardous jewelry manufacturing operations. See 29 CFR 530.101. Consistent with FLSA sections 11(d) and 14(c), the DOL's Wage and Hour Division (WHD) regulates the employment of industrial homeworkers and workers with disabilities covered by special certificates and governs the application and approval process for obtaining the certificates.

The FLSA also requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide certificates authorizing the employment of full-time students at not less than 85 percent of the applicable minimum wage or less than $1.60, whichever is higher, in (1) retail or service establishments and agriculture (29 U.S.C. 214(b)(1); 29 CFR 519.11(a)). The FLSA and the regulations set forth the application requirements as well as the terms and conditions for the employment of full-time students at subminimum wages under certificates and temporary authorization to employ such students at subminimum wages. The subminimum wage programs are designed to increase employment opportunities for full-time students. Regulations issued by the DOL, Office of Apprenticeship no longer permit the payment of subminimum wages to apprentices in an approved program. 29 CFR 29.5(b)(5). Thus, the DOL has issued no apprentice certificates since 1987. However, the WHD must maintain the information collection in order for the agency to fulfill its statutory obligation under FLSA to maintain this program.

II. Review Focus: The Department of Labor is particularly interested in comments which:

• 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;

• Enhance the quality, utility, and clarity of the information to be collected;

• 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;

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of various special employment programs.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act.

OMB Number: 1235–0001.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Agency Numbers: Forms WH–2, WH–46, WH–75, WH–200, WH–201, WH–202, WH–205, WH–209, WH–226, WH–226A.

Total Respondents: 3,615.

Total Annual Responses: 11,097.

Estimated Total Burden Hours: 7,542.

Estimated Time per Response: Ranges from 10 minutes to 60 minutes depending on the form.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $1,554.

Dated: November 26, 2013.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2013–28881 Filed 12–2–13; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Comparability of Current Work to Coal Mine Employment (CM–913). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 3, 2014.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1447, Email *Ferguson.Yoon@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 et seq., provides for the payment of benefits to coal miners who are totally disabled by black lung disease arising out of coal mine employment, and their dependents and survivors. Once a miner has been identified as having performed non-coal mine work subsequent to coal mine employment, the miner or the miner's survivor is asked to complete a CM–913 to compare coal mine work to non-coal mine work. This employment information along with medical information is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment. This information collection is currently approved for use through April 30, 2014.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to administer the Black Lung Benefits Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Comparability of Current Work to Coal Mine Employment (CM–913).

OMB Number: 1240–0035.

Agency Number: CM–913.

Affected Public: Individuals or households.

Total Respondents: 1,650.

Total Annual Responses: 1,650.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 825.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $809.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2013.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2013–28880 Filed 12–2–13; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (13–138)]

NASA Advisory Council; Information Technology Infrastructure Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a meeting of the Information Technology Infrastructure Committee (ITIC) of the NASA Advisory Council (NAC).

DATES: Tuesday, December 10, 2013, 8:00–5:30 p.m., and Wednesday, December 11, 2013, 8:30–9:30 a.m., Local Time.

ADDRESSES: NASA Kennedy Space Center, Headquarters Building, Room 3225, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Diaz, ITIC Executive Secretary, NASA Headquarters, 300 E Street SW., Washington, DC 20546, Phone: 202–358–2582.

SUPPLEMENTARY INFORMATION: This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number (877) 917–5780 to telephonically join the meeting on either day. A conference operator will request the passcode of ''NASANACIT''. Callers must provide their name and organization to join the teleconference. For any security related questions, please contact Pam Adams at 321–431–4920.

The agenda topics for the meeting will include:

- Governance/Role of the Chief Information Officer
- Space Launch System
- Kennedy Space Center Operations and Technology Issues
- Cybersecurity, Next Gen Network, Big Data

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. All U.S. citizens desiring to attend the this meeting at the Kennedy Space Center must provide their full name, company affiliation (if applicable), driver's license number and state, citizenship, place of birth and date of birth to the Kennedy Space Center Protective Services Office no later than close of business on December 5, 2013. All non-U.S. citizens must submit their name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. Social Security Number (if applicable); Permanent Resident (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and Passport information to include Country of issue, number, and expiration date to the Kennedy Space Center Protective Services Office no later than close of business on December 5, 2013. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the KSC Badging Office, Building M6–0224, located just outside of KSC Gate 2, on SR 405, Kennedy Space Center, Florida. Please provide the appropriate data required above by email to Tina Hosch at *TINA.HOSCH@NASA.GOV* or fax 321–867–7206, noting at the top of the page ''Public Admission to the Information Technology Infrastructure Committee of the NASA Advisory Council at KSC.'' For security questions, please email Tina Hosch at *TINA.HOSCH@NASA.GOV.* All visitors will be escorted while attending the meeting at Kennedy Space Center. All visitors will board a bus at the Kennedy Space Center Badging Office for transportation to and from the meeting.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Note: In accordance with Section 102–3.150(b) of Part II General Services Administration (GSA) Federal Advisory Committee Management: Final Rule (41 CFR Parts 101–6 and 102–3), dated Thursday, July 19, 2001, this meeting is being held with less than 15 days' notice due to exceptional circumstances and scheduling constraints associated with the decision on November 25, 2013 to reorganize the NASA Advisory Council.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–28888 Filed 12–2–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (13–139)]

NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Monday, December 9, 2013, 9:00 a.m.–5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Conference Room 8E40, 300 E Street, SW., Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Herring, Office of the Chief Financial Officer, NASA Headquarters, Washington, DC 20546. Phone: 202–358–1698.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes briefings on the following topics:

- Finance Update
- Budget Update
- NASA Strategic Planning and Performance
- Conference Reporting Update
- System Division Initiatives Update
- NASA's Most Serious Top Management Challenges

• NASA Shared Services Center Brief

The meeting will be open to the public up to the seating capacity of the room. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the Audit, Finance, and Analysis Committee meeting in room 8E40 before receiving an access badge. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. social Security Number (if applicable), and place and date of entry into the U.S., fax to Angela Herring, Executive Secretary, Audit, Finance, and Analysis Committee, FAX (202) 358–4336, no later than December 5, 2013. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card) holders can provide identifying information in advance by contacting Angela Herring at (202) 358–1698, or fax: (202) 358–4336.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Note: In accordance with Section 102–3.150(b) of Part II General Services Administration (GSA) Federal Advisory Committee Management: Final Rule (41 CFR Parts 101–6 and 102–3), dated Thursday, July 19, 2001, this meeting is being held with less than 15 days' notice due to exceptional circumstances and scheduling constraints associated with the decision on November 25, 2013 to reorganize the NASA Advisory Council.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–28891 Filed 12–2–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (13–140)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, December 11, 2013, 1:00 p.m.–5:15 p.m., Local Time; and Thursday, December 12, 2013, 9:00 a.m.–4:00 p.m., Local Time.

ADDRESSES: NASA Kennedy Space Center, Headquarters Building, Room 2201, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

—Aeronautics
—Audit, Finance and Analysis
—Education and Public Outreach
—Human Exploration and Operations
—Information Technology Infrastructure
—Science
—Technology and Innovation

This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 866–753–1451 or toll access number 1–203–875–1553, and then the numeric participant passcode: 6957984 followed by the # sign. To join via WebEx, the link is *https://nasa.webex.com/*, meeting number is 996 148 277, and password: NACdec2013! (Password is case sensitive).

Note: If dialing in, please ''mute'' your telephone.

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. All U.S. citizens desiring to attend the this meeting at the Kennedy Space Center must provide their full name, company affiliation (if applicable), driver's license number and state, citizenship, place of birth, and date of birth to the Kennedy Space Center Protective Services Office no later than close of business on December 5, 2013. All non-U.S. citizens must submit their name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. Social Security Number (if applicable); Permanent Resident (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and passport information to include country of issue, number, and expiration date, to the Kennedy Space Center Protective Services Office no later than close of business on December 5, 2013. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the KSC Badging Office, Building M6–0224, located just outside of KSC Gate 2, on SR 405, Kennedy Space Center, Florida. Please provide the appropriate data required above by email to Tina Hosch at *TINA.HOSCH@NASA.GOV* or fax 321–867–7206, noting at the top of the page ''Public Admission to the NASA Advisory Council at KSC.'' For security questions, please email Tina Hosch at *TINA.HOSCH@NASA.GOV.* All visitors will be escorted while attending the meeting at Kennedy Space Center. All visitors will board a bus at the Kennedy Space Center Badging Office for transportation to and from the meeting.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Note: In accordance with Section 102–3.150(b) of Part II General Services Administration (GSA) Federal Advisory Committee Management: Final Rule (41 CFR Parts 101–6 and 102–3), dated Thursday, July 19, 2001, this meeting is being held with less than 15 days' notice due to exceptional circumstances and scheduling constraints associated with the decision on November 25, 2013 to reorganize the NASA Advisory Council.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–28890 Filed 12–2–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: December 2013

TIME AND DATES: All meetings are held at 2:00 p.m.

Wednesday, December 4;
Thursday, December 5;
Friday, December 6;
Wednesday, December 11;
Thursday, December 12;
Monday, December 16;
Tuesday, December 17;
Wednesday, December 18;
Thursday, December 19;
Friday, December 20.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Henry Breiteneicher, Associate Executive Secretary, (202) 273–2917.

Dated: November 27, 2013.

William B. Cowen,

Solicitor.

[FR Doc. 2013–29025 Filed 11–29–13; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting Notice

DATE: Week of December 2, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 2, 2013

Thursday, December 5, 2013

4:00 p.m. Affirmation Session (Public Meeting) (Tentative)

a. *Southern California Edison Company* (San Onofre Nuclear Generating Station, Units 2 and 3), *Citizens Oversight Petition for Review of LBP–12–25* (Jan. 15, 2013); *Southern California Edison Company's Motion to Withdraw License Amendment Request and to Vacate LBP–12–25 and Associated Petition for Review as Moot* (Aug. 8, 2013); *NRC Staff's Motion to Vacate Licensing Board Order LBP–12–25* (Aug. 9, 2013) (Tentative)

b. *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), NRC Staff's Motion to Vacate the Licensing Board's Full Initial Decision, LBP–13–7 (June 14, 2013) (Tentative)

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: November 27, 2013.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–29018 Filed 11–29–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30813; File No. 812–14157]

Arrow Investment Advisors, LLC, et al.; Notice of Application

November 26, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) series of certain open-end management investment companies that track the performance of an index provided by an affiliated person to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Arrow Investment Advisors, LLC (''Current Adviser'') and Arrow Investments Trust (''Trust'').

DATES: *Filing Dates:* The application was filed on May 21, 2013 and amended on August 23, 2013 and November 22, 2013. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 23, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 2943 Olney Sandy Springs Road, Olney, MD 20832.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's

Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company with multiple series.

2. The Current Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will be the investment adviser to the Self-Indexing Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Self-Indexing Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be subject to registration thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors, each a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), who will act as distributor and principal underwriter of one or more of the Self-Indexing Funds (each, a ''Distributor''). The Distributor of any Self-Indexing Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Self-Indexing Fund's Adviser and/or Sub-Advisers. No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the initial series of the Trust described in the application (''Initial Self-Indexing Fund''), as well as any additional series of the Trust and other open-end management investment companies, or series thereof, that may be created in the future (''Future Self-Indexing Funds''), each of which will operate as an exchange-traded fund (''ETF'') and will track a specified index comprised solely of domestic or foreign securities (each, an ''Underlying Index''). Any Future Self-Indexing Fund will (a) be advised by the Current Adviser or an entity controlling, controlled by, or under common control with the Current Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Self-Indexing Fund and Future Self-Indexing Funds, together, are the ''Self-Indexing Funds.'' [1]

5. Each Self-Indexing Fund will hold certain securities (''Portfolio Securities'') selected to correspond generally to the performance of its Underlying Index. Each Underlying Index will be comprised solely of domestic and/or foreign equity and/or fixed income securities. Each Self-Indexing Fund will track one of the following types of Underlying Indexes: (i) an index made up of domestic equity securities and/or domestic fixed income securities, (ii) an index made up of foreign equity securities and/or foreign fixed income securities (such Funds, ''International Funds''), or (iii) an index made up of foreign and domestic equity securities and/or foreign and domestic fixed income securities (such Funds, ''Global Funds'').

6. Applicants represent that each Self-Indexing Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions [2], and in the case of International and Global Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Self-Indexing Fund may also invest up to 20% of its assets in securities and other instruments not included in its Underlying Index but which the Adviser and/or Sub-Adviser believes will help the Self-Indexing Fund track its Underlying Index, including but not limited to certain index futures, options, options on futures, options on index futures, swap contracts or other derivatives, cash and cash equivalents, and other investment companies. A Self-Indexing Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may offer Self-Indexing Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each 130/30 Fund will include strategies that: (i) establish long positions in securities so that total long exposure represents approximately 130% of the Self-Indexing Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Self-Indexing Fund's net assets. Each Long/Short Fund will obtain exposures equal to the long and short positions specified by the Long/Short Index.[4]

8. A Self-Indexing Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Self-Indexing Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Self-Indexing Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Self-Indexing Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Self-Indexing Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. An Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Self-Indexing Fund, of the Adviser, of any Sub-Adviser to or promoter of a Self-Indexing Fund, or of the Distributor (each, an ''Affiliated Index Provider'') [5]

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Self-Indexing Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Self-Indexing Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Self-Indexing Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Self-Indexing Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Self-Indexing Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] The applicants currently expect that the Adviser will serve as the Affiliated Index Provider for the Self-Indexing Funds. In the event that the Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the term ''Affiliated Index Provider,'' with respect to that Self-Indexing Fund, will refer to the employees of the Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

will create a proprietary, rules-based methodology to create Underlying Indexes.[6] The Affiliated Index Provider will create, compile, sponsor or maintain the Underlying Indexes. Each Self-Indexing Fund will be entitled to use its Underlying Index pursuant to a licensing agreement with the Affiliated Index Provider.[7]

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated. Prior orders granted to self-indexing ETFs (''Prior Self-Indexing Orders'') addressed these concerns by creating a framework that required: (i) transparency of the Underlying Indexes; (ii) the adoption of policies and procedures not otherwise required by the Act designed to mitigate such conflicts of interest; (iii) limitations on the ability to change the rules for index compilation and the component securities of the index; (iv) that the index provider enter into an agreement with an unaffiliated third party to act as ''Calculation Agent''; and (v) certain limitations designed to separate employees of the index provider, adviser and Calculation Agent (clauses (ii) through (v) are hereinafter referred to as ''Policies and Procedures'').[8]

11. Instead of adopting the same or similar Policies and Procedures, applicants propose that each day that a Self-Indexing Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'')) on which the Self-Indexing Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Self-Indexing Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its publicly available Web site (''Web site''),[9] before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the portfolio securities, assets, and other positions held by the Self-Indexing Fund (''Portfolio Holdings'') that will form the basis for the Self-Indexing Fund's calculation of its NAV at the end of the Business Day.[10] Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective alternative mechanism for addressing any such potential conflicts of interest.

12. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed ETFs. Applicants observe that the framework set forth in the Prior Self-Indexing Orders was established before the Commission began issuing exemptive relief to allow the offering of actively-managed ETFs.[11] Unlike passively-managed ETFs, actively-managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an ''active'' management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. However, rather than requiring Policies and Procedures similar to those required under the Prior Self-Indexing Orders, applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as the conditions to their relevant exemptive relief require.

13. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self-Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[12]

14. The Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy and Code of Ethics.[13] In accordance with the Code of

[6] The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Self-Indexing Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Self-Indexing Fund.

[7] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[8] *See, e.g.,* In the Matter of WisdomTree Investments Inc., et al., Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order); In the Matter of IndexIQ ETF Trust, et al., Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (March 20, 2009) (order); and Van Eck Associates Corporation, et al., et al., Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order).

[9] The information provided on the Web site will be formatted to be reader-friendly.

[10] Under accounting procedures followed by each Self-Indexing Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Self-Indexing Funds will be able to disclose at the beginning of each Business Day the portfolio that will form the basis for the NAV calculation at the end of that Business Day.

[11] *See, e.g.,* In the Matter of Huntington Asset Advisors, Inc., et al., Investment Company Act Release Nos. 30032 (April 10, 2012) (notice) and 30061 (May 8, 2012) (order); In the Matter of Russell Investment Management Co., et al., Investment Company Act Release Nos. 29655 (April 20, 2011) (notice) and 29671 (May 16, 2011) (order); In the Matter of Eaton Vance Management, et al., Investment Company Act Release Nos. 29591 (March 11, 2011) (notice) and 29620 (March 30, 2011) (order) and; In the Matter of iShares Trust, et al., Investment Company Act Release Nos. 29543 (Dec. 27, 2010) (notice) and 29571 (Jan. 24, 2011) (order).

[12] *See, e.g.,* rule 17j–1 under the Act and section 204A under the Advisers Act and rules 204A–1 and 206(4)–7 under the Advisers Act.

[13] The Adviser has also adopted or will adopt a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from

Ethics and Inside Information Policy of the Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit [14] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, no Affiliated Index Provider will provide any information relating to changes to an Underlying Index's methodology for the inclusion or exclusion of component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by such Affiliated Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. In light of the foregoing, applicants believe it is appropriate to allow the Self-Indexing Funds to be fully transparent in lieu of Policies and Procedures from the Prior Self-Indexing Orders discussed above.

17. The Shares of each Self-Indexing Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[15] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Self-Indexing Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Self-Indexing Fund's portfolio (including cash positions) [16] except: (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [17] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [18] will be excluded from the Deposit Instruments and the Redemption Instruments; [19](d) to the extent the Self-Indexing Fund determines, on a given Business Day, to use a representative sampling of the Self-Indexing Fund's portfolio; [20] or (e) for temporary periods, to effect changes in the Self-Indexing Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

18. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) to the extent there is a Cash Amount; (b) if, on a given Business Day, the Self-Indexing Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Self-Indexing Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [21] (d) if, on a given Business Day, the Self-Indexing Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of International and Global Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Self-Indexing Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the

engaging in any conduct prohibited in rule 17j–1 (''Code of Ethics'').

[14] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[15] The Self-Indexing Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Self-Indexing Funds will comply with the conditions of rule 144A.

[16] The portfolio used for this purpose will be the same portfolio used to calculate the Self-Indexing Fund's NAV for the Business Day.

[17] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[18] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Self-Indexing Fund does not intend to seek such consents.

[19] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (defined below).

[20] A Self-Indexing Fund may only use sampling for this purpose if the sample: (i) is designed to generate performance that is highly correlated to the performance of the Self-Indexing Fund's portfolio; (ii) consists entirely of instruments that are already included in the Self-Indexing Fund's portfolio; and (iii) is the same for all Authorized Participants (defined below) on a given Business Day.

[21] In determining whether a particular Self-Indexing Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Self-Indexing Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Self-Indexing Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Self-Indexing Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of an International Fund or Global Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[22]

19. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $15 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Self-Indexing Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

20. Each Business Day, before the open of trading on the Listing Exchange, each Self-Indexing Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Self-Indexing Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Portfolio Securities and other assets of the Self-Indexing Fund.

21. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Self-Indexing Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Self-Indexing Fund's existing shareholders. Each Self-Indexing Fund may (but is not required to) impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[23] The Distributor will be responsible for delivering the Self-Indexing Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

22. Shares of each Self-Indexing Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

23. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[24] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

24. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Self-Indexing Fund, or tender such Shares for redemption to the Self-Indexing Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

25. Neither the Trust nor any Self-Indexing Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Self-Indexing Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Self-Indexing Fund or tender such Shares for redemption to the Self-Indexing Fund in Creation Units only. The Self-Indexing Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent

[22] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[23] Where a Self-Indexing Fund permits an in-kind purchaser (or redeeming investor) to substitute (or receive) cash-in-lieu of depositing one or more of the requisite Deposit Instruments (or receiving one or more Portfolio Securities), the purchaser (or redeeming investor) may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments (or selling such Portfolio Securities).

[24] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Self-Indexing Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Self-Indexing Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Self-Indexing Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Self-Indexing Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for International and Global Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign Portfolio Securities held by an International Fund or Global Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to International and Global Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow International and Global Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[25]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of an International Fund or Global Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to International and Global Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting

[25] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Self-Indexing Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Self-Indexing Funds, and any principal underwriter for the Self-Indexing Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Self-Indexing Fund.[26] To limit the control that a Fund of Funds may have over a Self-Indexing Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Self-Indexing Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Self-Indexing Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Self-Indexing Fund) will cause a Self-Indexing Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Self-Indexing Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Self-Indexing Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Self-Indexing Fund under rule 12b–1 under the Act) received from a Self-Indexing Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Self-Indexing Fund, in connection with the investment by the Fund of Funds in the Self-Indexing Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[27]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Self-Indexing Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Self-Indexing Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Self-Indexing Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Self-Indexing Funds and not in any other investment company.

18. Applicants also note that a Self-Indexing Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Self-Indexing Fund would still retain its ability to

[26] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Self-Indexing Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Self-Indexing Fund and any person controlling, controlled by or under common control with any of these entities.

[27] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Self-Indexing Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Self-Indexing Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Self-Indexing Funds, may be deemed affiliated persons of the Trust or such Self-Indexing Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Self-Indexing Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Self-Indexing Funds, or Second-Tier Affiliates of the Self-Indexing Funds, solely by virtue of one or more of the following: (a) holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Self-Indexing Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Self-Indexing Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Self-Indexing Fund will be valued in the identical manner as those Portfolio Securities currently held by such Self-Indexing Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Self-Indexing Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to applicants and any Affiliated Persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Securities held by a Self-Indexing Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for Affiliated Persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Self-Indexing Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Securities held by a Self-Indexing Fund as are used for calculating ''in-kind'' redemptions or purchases, the Self-Indexing Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Self-Indexing Fund to track closely its Underlying Index and therefore aid in achieving the Self-Indexing Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Self-Indexing Fund that is an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in any accompanying in-kind transactions with the Fund of Funds.[28] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Self-Indexing Fund will be based on the NAV of the Self-Indexing Fund.[29] Applicants believe that any proposed transactions directly between the Self-Indexing Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Self-Indexing Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective

[28] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Self-Indexing Fund, a Fund of Funds might seek to transact in Creation Units directly with a Self-Indexing Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Self-Indexing Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Self-Indexing Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Self-Indexing Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[29] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Self-Indexing Fund or (b) an affiliated person of a Self-Indexing Fund, or an affiliated person of such person, for the sale by the Self-Indexing Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Self-Indexing Fund operates in reliance on the requested order, the Shares of such Self-Indexing Fund will be listed on an Exchange.

3. Neither a Trust nor any Self-Indexing Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Self-Indexing Fund and tender those Shares for redemption to a Self-Indexing Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Self-Indexing Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the identities and quantities of the Self-Indexing Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Self-Indexing Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Self-Indexing Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Self-Indexing Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Self-Indexing Fund, it will vote its Shares of the Self-Indexing Fund in the same proportion as the vote of all other holders of the Self-Indexing Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Self-Indexing Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Self-Indexing Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Self-Indexing Fund or a Self-Indexing Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Self-Indexing Fund or Self-Indexing Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Self-Indexing Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Self-Indexing Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Self-Indexing Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Self-Indexing Fund; (ii) is within the range of consideration that the Self-Indexing Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Self-Indexing Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Self-Indexing Fund under rule 12b-l under the Act) received from a Self-Indexing Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Self-Indexing Fund, in connection with the investment by the Fund of Funds in the Self-Indexing Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Self-Indexing Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Self-Indexing Fund, in connection with the investment by the Investing Management Company in the Self-Indexing Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Self-Indexing Fund) will cause a Self-Indexing Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Self-Indexing Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Self-Indexing Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Self-Indexing Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Self-Indexing Fund. The Board will consider, among other things: (i) whether the purchases were consistent with the investment objectives and policies of the Self-Indexing Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting

compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Self-Indexing Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Self-Indexing Fund.

8. Each Self-Indexing Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Self-Indexing Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Self-Indexing Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Self-Indexing Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Self-Indexing Fund of the investment. At such time, the Fund of Funds will also transmit to the Self-Indexing Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Self-Indexing Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Self-Indexing Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Self-Indexing Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Self-Indexing Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Self-Indexing Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Self-Indexing Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28849 Filed 12–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70947; File No. SR–OCC–2013–21]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Technical Changes to OCC's By-Laws and Rules in Connection with the Modification of the Individual Registration Categories of the Investment Industry Regulatory Organization of Canada

November 26, 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 November 20, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by OCC. OCC has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (''OCC'') would make technical changes to OCC's By-Laws and Rules in connection with the modification of the individual registration categories of the Investment Industry Regulatory Organization of Canada (''IIROC'') under which every Canadian clearing member or applicant seeking to become a Canadian clearing member would be required to employ at least one associated person registered as a Chief Financial Officer (''CFO'') with IIROC.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(4)(ii).

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

In connection with a change made by IIROC to its individual registration categories, OCC is proposing to make technical changes to its By-Laws and Rules under which every Canadian clearing member or applicant seeking to become a Canadian clearing member would be required to employ at least one associated person registered as the Clearing Member's CFO. OCC's membership standards include conditions designed to assess the overall quality and character of the personnel of an applicant. These conditions include a requirement that at least one associated person of the applicant be registered as a Financial and Operations Principal (''FINOP'') with FINRA and at least two key operations staff be full-time employees of the applicant. For Canadian members, OCC has permitted this requirement to be satisfied where any principal, director or officer of the firm is also registered as a Designated Registered Options Principal (''DROP'') with the IIROC. However, as a result of IIROC's modification of its registration categories the DROP has supervisory authority with respect to options transactions but no responsibilities over the books and records of the IIROC member.

Under IIROC's rules, the registered CFO is responsible for monitoring the investment dealer's adherence with the financial rules of IIROC as well as establishing and maintaining policies and procedures related to financial requirements, which in OCC's view equates to that of the function of FINOP under the rules for membership standards. Accordingly, the proposed changes to Article V and Section (a) of Rule 214 takes into account the regulatory changes made by IIROC with respect to the DROP by requiring every Canadian clearing member or applicant seeking to become a Canadian clearing member to employ at least one associated person registered as the Canadian clearing member's CFO, in place of the current requirement that at least one employee be a Principal/Director/Officer and a DROP. OCC is also proposing to replace outdated references in the By-Laws and Rules to the Investment Dealers Association of Canada to IIROC, which is its successor.[4]

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [5] and the rules and regulations thereunder, including Rules 17Ad–22(d)(1) and 17Ad–22(d)(2), because the proposed modifications would help ensure that the By-Laws and Rules of OCC provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions [6] and require participants to have robust operational capacity to meet obligations arising from participation in the clearing agency and to have procedures in place to monitor that participation requirements are met on an ongoing basis.[7] The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[8] Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency and the markets that the clearing agency serves. This proposed rule change affects only Canadian clearing members or applicants seeking to become a Canadian clearing member and OCC believes that the proposed modifications would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed modifications are technical in nature and designed to take into account changes in regulations applicable to Canadian broker-dealers and would apply equally to all Canadian clearing members.

(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.

[4] IIROC was established on June 1, 2008 through the consolidation of the Investment Dealers Association of Canada and Market Regulation Services Inc.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22(d)(1).

[7] 17 CFR 240.17Ad–22(d)(2).

[8] 15 U.S.C. 78q–1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed 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 if consistent with the protection of investors and the public interest, the proposed change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

OCC has requested that the Commission waive the 30 day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act so that the proposal may become operative immediately upon filing.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as the proposed rule change is technical in nature and waiver of the operative delay will help ensure that OCC's By-Laws and Rules provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(6)(iii), OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed change, or such shorter time as designated by the Commission.

[11] *Id.*

[12] Notwithstanding the foregoing, OCC has noted that implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation § 40.6.

[13] For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2013–21 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–2013–21. 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_21.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–2013–21 and should be submitted on or before December 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28847 Filed 12–2–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70948; File No. SR–CHX–2013–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Match Trade Prevention Modifier for Limit and Market Orders Submitted to the Exchange

November 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on November 20, 2013, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6)[3] which is effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend Article 1, Rule 1 (Definitions) and Rule 2 (Order Types, Modifiers, and Related Terms) to adopt a Match Trade Prevention order execution modifier for limit and market orders submitted to the CHX Matching System (''Matching System''). The text of this proposed rule change is available on the Exchange's Web site at *www.chx.com,* at the principal office of the Exchange, on the Commission's Web site at *www.sec.gov* and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX 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 does not currently offer Match Trade Prevention (''MTP'') functionality. The Exchange now proposes to adopt Article 1, Rule 2(b)(3)(F) to offer MTP functionality for limit[4] and market[5] orders that are submitted to the Matching System.[6] In sum, through the use of a proposed MTP order execution modifier, Participants may prevent the execution of marketable contra-side orders that originated from the same group of one or more trading accounts (*i.e.,* MTP Trading Group), but will not prevent an execution if such contra-side orders originated from different subgroups within the same MTP Trading Group. Thus, given that the proposed MTP functionality is based on the interaction between MTP Trading Groups, the Exchange further proposes to adopt Article 1, Rule 1(ll) to define ''Trading Account'' and Rule 1(mm) to define ''MTP Trading Group.''

Trading Accounts and MTP Trading Groups

Before discussing the details of the operation of the proposed MTP functionality, it is important to first outline the interplay between Trading Accounts and MTP Trading Groups. Currently, an order submitted to the Matching System originates from a Trading Account, which is identified by a unique account symbol, under a Trading Permit.[7] A Participant may hold

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Article 1, Rule 2(a)(1) defines ''limit order,'' in pertinent part, as ''an order to buy or sell a specific amount of a security at a specified price or better if obtainable once the order has been submitted to the market.''

[5] Article 1, Rule 2(a)(3) defines ''market order,'' in pertinent part, as ''an order to buy or sell a specific amount of a security at the best price available once the order is presented in the market.''

[6] The proposed MTP functionality will only be applicable to single-sided orders. The purpose of MTP is obviated if both sides of an order are already identified, as in the case of a cross order. Article 1, Rule 2(a)(2) defines ''cross order,'' in pertinent part, as ''an order to buy and sell the same security at a specific price better than the best bid and offer displayed in the Matching System and which would not constitute a trade-through under Regulation NMS (including all applicable exceptions and exemptions).'' As such, MTP modifiers may only be applied to limit and market orders.

[7] CHX Article 1, Rule 1(aa) defines ''Trading Permit'' as ''a permit issued by the Exchange, granting the holder a revocable license to execute approved securities transactions through the

Continued

no more than one Trading Permit.[8] In practice, but not currently stated in CHX rules, a Participant Trading Permit holder may maintain one or more trading accounts under its Trading Permit. Thus, given that the proposed MTP functionality assumes that all orders sent to the Matching System originate from MTP Trading Groups, it is necessary to define the terms ''Trading Account'' [9] and ''MTP Trading Group.''

Proposed Article 1, Rule 1(ll) defines ''Trading Account'' as an account under a Trading Permit,[10] identified by a unique CHX account symbol, from which orders are sent to the Exchange's Trading Facilities. Also, a Trading Permit holder may establish more than one Trading Account per Trading Permit.

Proposed Article 1, Rule 1(mm) provides that an ''MTP Trading Group'' means a group of one or more Trading Accounts that have been aggregated at the request of all Participant Trading Permit holders that control all Trading Accounts within the proposed group for the purpose of enabling Match Trade Prevention functionality, pursuant to proposed Article 1, Rule 2(b)(3)(F)(i). It also states that a Trading Account may not be assigned to more than one MTP Trading Group. Lastly, it provides that any Exchange-approved changes to the composition of an MTP Trading Group shall be effective no earlier than the trading day following the request.

Although the Exchange anticipates that the vast majority of MTP Trading Groups will be composed of Trading Accounts from the same Participant Trading Permit holder, the proposed definition of MTP Trading Groups allows an MTP Trading Group to be comprised of Trading Accounts from *different* Participant Trading Permit holders. This is meant to address a scenario where a customer order sender has ''sponsored access'' to the Exchange through two different Participant Trading Permit holders (*i.e.,* one customer order sender submitting orders to the Exchange through two Trading Permits).[11] Also, if a Participant Trading Permit holder wishes to aggregate a Trading Account, which has been assigned to its own MTP Trading Group, with other Trading Accounts, in order to form a new MTP Trading Group, the single Trading Account must only be designated to the new aggregated MTP Trading Group and will no longer be associated with its original MTP Trading Group.

Enabling or Disabling MTP

As suggested by the proposed definition of ''MTP Trading Group,'' the Exchange proposes to require Participants Trading Permit holders to request that the Exchange enable the proposed MTP functionality for specified MTP Trading Groups. This will give the Exchange an opportunity to admonish Participants of the key aspects of the proposed MTP functionality, described in detail below, and will also facilitate the Exchange's monitoring of the use of MTP. This will further provide an opportunity for the Participant(s) to determine which Trading Accounts will be part of MTP Trading Groups and which Trading Accounts will not be subject to the MTP functionality. Therefore, orders that originate from an MTP Trading Group will always be subject to the proposed MTP functionality.

Thus, proposed Article 1, Rule 2(b)(3)(F)(i) provides that the MTP modifier shall only be available for an order that originated from a Trading Account, as defined under proposed Article 1, Rule 1(ll), that has been assigned to an MTP Trading Group, as defined under Article 1, Rule 1(mm).[12] It further states that an order that originated from a Trading Account that is not part of an MTP Trading Group shall not be subject to MTP and any attached MTP modifiers shall be ignored. It further provides that any Exchange-approved changes to the applicability of MTP to a Trading Account shall be effective on the trading day following the date of the request to enable or disable MTP.

Triggering MTP

Proposed Article 1, Rule 2(b)(3)(F)(ii) provides that an MTP modifier is comprised of a *compulsory* MTP Action, listed under proposed subparagraph (iii), and an *optional* MTP sublevel designation and that the MTP modifier on the incoming order shall control the interaction between the contra-side orders. With respect to the actual functionality, it further states that an incoming limit or market order designated with an MTP modifier *without* an MTP sublevel designation will be prevented from executing against a resting opposite side order from the same MTP Trading Group, as defined under proposed Article 1, Rule 1(mm).[13] If, however, the incoming order is marked by an MTP modifier *with* an MTP sublevel designation,[14] the order will only be prevented from executing against a resting opposite side order from the same MTP Trading Group if the resting order is marked by the same MTP sublevel designation. Moreover, MTP shall only be applicable to marketable contra-side orders that are both principal orders or are both agency orders.

The proposed MTP functionality is based on the interaction between MTP Trading Groups and if applicable, subgroups within the MTP Trading Group, which are created through the use of optional MTP sublevel designations. As discussed above, an incoming order marked with an MTP modifier will not be allowed to execute against a resting opposite side order from the same MTP Trading Group.[15]

Exchange's Trading Facilities, or to have those transactions executed on its behalf.'' In turn, CHX Article 1, Rule 1(z) defines ''Trading Facilities'' as ''all of the Exchange's facilities for the trading of equity securities, including any and all electronic or automated order routing, execution and reporting systems provided by the Exchange.''

[8] CHX Article 3, Rule 2(e).

[9] ''Trading Accounts'' are not currently defined in the CHX rulebook.

[10] *See supra* note 7.

[11] This scenario might occur, for example, where a sponsored access order sender is in the process of transitioning its trading activity from one Trading Account controlled by one Participant Trading Permit holder to the Trading Account of another Participant Trading Permit holder. In such a case, the sponsored access order sender may wish to use the proposed MTP functionality to prevent executions of orders from the two Trading Accounts during the transition period.

[12] Prior to implementing the proposed MTP functionality, the Exchange will create a form document that will outline key aspects of the proposed MTP functionality, including the fact that the use of MTP modifiers may result in the cancellation of a customer order by an order submitted by or on behalf of another customer. This form document will be given to Participants requesting that the MTP functionality be enabled for designated Trading Accounts. Among other things, the form document will require such Participants to designate Trading Accounts to MTP Trading Groups and to acknowledge receipt of the form document prior to the MTP functionality being enabled.

[13] Initially, it is important to note the distinction between an incoming order and a resting order. An incoming order is usually an order that has been submitted to the Matching System that has not yet interacted with the CHX book. If and when an incoming order posts to the CHX book, the order becomes a resting order. However, a resting order can become an incoming order if it is being price slid into a new price point, pursuant to a price sliding functionality offered by the Exchange *(e.g.,* CHX Only Price Sliding Processes under Article 1, Rule 2(b)(1)(C)). A discussion of the interplay between the CHX Only Price Sliding Processes and the proposed MTP functionality may be found below. As such, it is inaccurate to characterize the newer order as always being the incoming order and the older order as always being the resting order. The actual distinction between incoming and resting orders is based on the liquidity removing/providing fee structure utilized by the Exchange. *See* CHX Fee Schedule, Section E. Therefore, an order that *removes* liquidity from the CHX book will always be the incoming order and an order that *provides* liquidity to the CHX book will always be the resting order.

[14] The Exchange proposes to permit sixty-two (62) distinct MTP sublevel designations (*i.e.,* a-z; A–Z; 0–9).

[15] The proposed MTP functionality does not require resting orders subject to the proposed MTP

However, if the MTP modifier of the incoming order indicates an MTP sublevel designation, the order will be considered to have originated from a subgroup within the MTP Trading Group, designated by the sublevel value,[16] and will only be prevented from executing against resting opposite side orders from the same subgroup (*i.e.,* same optional MTP sublevel designation). Consequently, an incoming order that originated from a subgroup will not be prevented from executing against opposite side resting orders from the same MTP Trading Group, so long as the opposite side order is *not* part of the same subgroup (*i.e.,* the resting order is either marked by a different MTP sublevel designation or is not marked by any MTP sublevel designation).[17]

In sum, where the incoming order is marked by an MTP modifier and originates from an MTP Trading Group, the proposed MTP functionality *will* prevent an order execution under the following circumstances:

(1) Both the incoming and resting orders originated from the same MTP Trading Group and neither order is part of a subgroup (*see Example 1*);

(2) Both the incoming and resting orders originated from the same subgroup within an MTP Trading Group (*see Examples 2 and 3*); or

(3) Both the incoming and resting orders are from the same MTP Trading Group, where the incoming order is not part of a subgroup and the resting order is part of any subgroup (*see Example 4*).

In contrast, the proposed MTP functionality *will not* prevent an order execution under the following circumstances:

(1) The incoming order is not marked by an MTP modifier or is marked MTP Inactive;

(2) Both the incoming and resting orders originated from different MTP Trading Groups; or

(3) Both the incoming and resting orders originated from the same MTP Trading Group, where the incoming order is part of any subgroup and the resting order is not part of a subgroup (*see Example 5*).

Example 1. Assume that the CHX book has one resting offer for 100 shares of security XYZ priced at $10.01/share and no resting bids for security XYZ. Assume that the resting offer originated from Trading Account ZAAA, under the Trading Permit held by Participant Z, which is part of MTP Trading Group Z1. Assume that the resting offer is marked with an MTP modifier,[18] is not marked by an MTP sublevel designation and is a Day [19] limit order.

Assume further that an incoming bid for 100 shares of security XYZ priced at $10.02/share is received by the Matching System. Assume that the incoming bid originated from Trading Account ZBBB, under a Trading Permit held by Participant Z, which is also part of MTP Trading Group Z1. Assume that the incoming bid is designated with an MTP modifier, is not marked with an MTP sublevel designation and is a Day limit order.

Under this example, MTP would prevent the incoming bid from executing against the resting offer because both orders originated from the same MTP Trading Group Z1, regardless of the fact that the orders originated from different Trading Accounts. As discussed above, only MTP Trading Groups and subgroups are relevant to the proposed MTP functionality.

Example 2. Assume the same as Example 1, except that the resting offer and incoming bid are both marked by the same optional MTP sublevel designation of ''1.''

Under this example, since both orders are part of the same subgroup Z1–1, MTP would prevent the incoming bid from executing against the resting offer.

Example 3. Assume the same as Example 1, except that the resting offer is marked by the MTP sublevel designation of ''1'' and the incoming bid is marked by another MTP sublevel designation of ''2.''

Under this example, since the resting offer and incoming bid are part of different MTP Trading Subgroups (*i.e.,* resting offer is part of subgroup Z1–1 and incoming bid part of subgroup Z1–2), MTP would not prevent the incoming bid from executing against the resting offer.

Example 4. Assume the same as Example 1 and the incoming bid is not marked by an MTP sublevel designation. Assume, however, that the resting offer is marked by an MTP sublevel designation of ''1.'' Since the MTP modifier on the incoming bid controls, the fact that the incoming bid is not part of subgroup means that the Matching System will not consider the subgroup of the resting offer.[20]

Thus, similar to Example 1, MTP would prevent the incoming bid from executing against the resting offer because both orders originated from the same MTP Trading Group Z1.

Example 5. Assume the same as Example 1 and the resting offer is not marked by an MTP sublevel designation. Assume, however, that the incoming bid is marked by an MTP sublevel designation of ''1'' and is, thus, part of subgroup Z1–1.

Under this example, the Matching System will consider the subgroup of the resting offer since the incoming bid is part of subgroup Z1–1. Moreover, since the resting offer is not part of a subgroup, the Matching System will treat the resting offer as being part of a different subgroup. Thus, MTP will not prevent the execution of the incoming bid against the resting offer, because the Matching System will treat the orders as being part of different subgroups.[21]

Finally, the Exchange proposes to limit the application of MTP to marketable contra-side orders that are both principal orders or are both agency orders (*i.e.,* principal-principal or agency-agency). The main purpose of this limitation is to prevent an agency top-of-book resting order from being cancelled by an incoming principal order from the same MTP Trading Group and *vice versa.* The Exchange anticipates that the vast majority of Participant Trading Permit holders that may utilize the proposed MTP functionality will be proprietary traders and, as such, all orders that originate from its MTP Trading Group(s) would be principal orders. However, since some of our Participant Trading Permit holders maintain proprietary and agency accounts, this limitation would prevent customer orders from being cancelled by proprietary orders. As such, the Exchange proposes to only permit marketable principal-principal and agency-agency orders from being eligible for the proposed MTP functionality.[22]

functionality to be marked by an MTP modifier. Since all orders subject to the MTP functionality will originate from an MTP Trading Group, the specific MTP Trading Group designations of resting orders will be known, regardless of whether or not the order has an MTP modifier attached.

[16] *See supra* note 14.

[17] Although an incoming order may not be prevented from executing against opposite side resting orders by MTP, the incoming order may nevertheless be prevented from executing against resting opposite side orders due to other order modifiers that may be attached to contra-side orders. For example, an incoming Post Only order marked by an MTP modifier would be cancelled if the order would remove liquidity from the CHX book, prior to the Matching System considering the MTP modifier. *See* Article 1, Rule 2(b)(1)(D). A detailed discussion of the interplay between the proposed MTP functionality and other existing order modifiers may be found below.

[18] For the purposes of determining whether or not the proposed MTP functionality is triggered, the type of MTP Action specified in the MTP code is irrelevant. So long as the MTP code contains one of the MTP Actions listed under proposed subparagraph (iii), the incoming order is considered to be ''designated with an MTP modifier,'' as required by proposed rule.

[19] Article 1, Rule 2(d)(1) defines ''Day'' as ''a modifier that requires an order to be in effect only for the day on which it is submitted to the Exchange.''

[20] The Exchange notes that it is purposely treating the absence of an MTP sublevel designation on the incoming order and presence of an MTP sublevel designation on the resting order one way (*i.e.,* prevent execution) and the absence of an MTP sublevel designation on the resting order and presence of an MTP sublevel designation on the incoming bid another way (*i.e.,* not preventing execution). The two seemingly similar scenarios are treated differently due to the need to implement an MTP scheme that will produce consistent and predictable result, especially where the contra-side orders have different MTP Actions.

[21] *Id.*

[22] In addition to marketable principal-principal orders, the proposed MTP functionality may be

Continued

MTP Order Cancellations

Once MTP is triggered, the next step is to determine which order(s) would be cancelled, if any. To this end, proposed subparagraph (iii) provides that the following MTP Actions may be applied to any incoming limit or market orders at the MTP Trading Group level as a default or at the individual order level *ad hoc:*

(a) *MTP Cancel Incoming (''N'')*: An incoming limit or market order marked ''N'' will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. Only the incoming order will be cancelled pursuant to MTP.

(b) *MTP Cancel Resting (''O'')*: An incoming limit or market order marked ''O'' will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. Only the resting order will be cancelled pursuant to MTP.

(c) *MTP Cancel Both (''B'')*: An incoming limit or market order marked ''B'' will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. The entire size of both orders will be cancelled pursuant to MTP.

Moreover, proposed subparagraph (iv) details the *MTP Inactivate* override function, which provides that an incoming limit or market order marked ''I'' will inactivate the default MTP action for the incoming order and will not prevent the order from executing against any resting opposite side orders.[23] Also, ''I'' may only be applied at the individual order level *ad hoc.* Finally, an incoming order marked ''I'' may be marked by an optional MTP sublevel designation.[24]

The following *Examples 1–4* illustrate how each one of the three MTP Actions and the MTP Inactivate would function.

Example 1. Assume that an order to buy 100 shares of security XYZ priced at $10.02/share is received by the Matching System and becomes a resting order on the CHX book. Subsequently, an order to sell *100 shares* of security XYZ priced at $10.02/share is received by the Matching System from the same MTP Trading Group and is marked ''N.'' Further assume that neither contra-side order is marked by an MTP sublevel designation and that both contra-side orders are Day limit orders.

Under this ''N'' Example 1, the full size of the incoming offer would be cancelled and the resting bid would remain on the CHX book. If the incoming bid were for *200 shares* or *50 shares,* the result would remain the same because the ''N'' MTP Action would require that the full size of the incoming bid be cancelled.

Example 2. Assume that an order to buy 100 shares of security XYZ priced at $10.02/share is received by the Matching System and becomes a resting order on the CHX book. Subsequently, an order to sell *100 shares* of security XYZ priced at $10.02/share is received by the Matching System from the same MTP Trading Group and is marked ''O.'' Further assume that neither contra-side order is marked by an optional MTP sublevel designation and that both contra-side orders are Day limit orders.

Under this Example 2, the full size of the resting offer would be cancelled and the incoming bid would not be cancelled pursuant to MTP.[25] If the incoming bid were for *200 shares* or *50 shares,* the result would remain the same because the ''O'' MTP Action would require that the full size of the resting offer to be cancelled.

Example 3. Assume that an order to buy 100 shares of security XYZ priced at $10.02/share is received by the Matching System and becomes a resting order on the CHX book. Subsequently, an order to sell *100 shares* of security XYZ priced at $10.02/share is received by the Matching System from the same MTP Trading Group and is marked ''B.'' Further assume that neither contra-side order is marked by an optional MTP sublevel designation and that both contra-side orders are Day limit orders.[26]

Under this Example 3, the full sizes of both the incoming offer and resting bid would be cancelled. If the incoming bid were for *200 shares* or *50 shares,* the result would remain the same because the ''B'' MTP Action would require that the full size of both orders be cancelled.

Example 4. Assume that an order to buy 100 shares of security XYZ priced at $10.02/share is received by the Matching System and becomes a resting order on the CHX book. Subsequently, an order to sell 100 shares of security XYZ priced at $10.02/share is received by the Matching System from the same MTP Trading Group and is marked ''I.'' Further assume that neither contra-side order is marked by an MTP sublevel designation and that both contra-side orders are Day limit orders.[27] Also assume that the MTP Trading Group from which the contra-side orders originated has a default MTP Action of ''N.''

Under this Example 4, the incoming offer would execute against the resting bid because the ''I'' modifier inactivated the default MTP Action of the MTP Trading Group, namely ''N.'' In contrast, if the incoming offer were not marked by the ''I'' modifier, MTP would have prevented the execution of the orders and cancelled the incoming offer. Also, since the MTP modifier on the incoming order always controls the MTP interaction, the fact that the resting order has a MTP modifier with a ''N'' MTP Action is irrelevant.

MTP and Other Order Modifiers

The proposed MTP modifier is fully compatible with all order execution,[28] display,[29] and duration modifiers,[30] that are applicable to limit and market orders.[31] This is because the proposed MTP modifier is the only order modifier that requires the Matching System to consider the MTP Trading Group and subgroup of an order. Thus, there are no other modifiers that would directly conflict with the proposed MTP modifier.

If an incoming order marked by an MTP modifier and at least one other modifier is executable against a resting opposite side order, the Matching System will verify the permissibility of the match first against the non-MTP modifiers before considering the MTP Trading Group or subgroup of the contra-side orders as required by the MTP modifier. That is, the MTP modifier will always be considered last. Thus, if such an incoming order is to be cancelled for reasons other than the MTP designation, the incoming order would be cancelled before the Matching System would have the opportunity to consider the MTP Trading Groups or subgroups of the contra-side orders. This priority scheme ensures that the

utilized where the marketable contra-side orders are both agency orders from the same customer. For instance, an MTP Trading Group may contain one agency account, through which only one customer is submitting orders to the Matching System as a sponsored access order sender. In such a case, the sponsored access order sender could use the proposed MTP functionality to prevent self-execution of its orders.

[23] Where contra-side orders are not prevented from executing due to the incoming order being marked ''I,'' the orders may execute in spite of MTP being triggered. In contrast, where contra-side orders are not prevented from executing due to the contra-side orders not being part of the same MTP Trading Group or trading subgroup, the orders may execute because MTP has not been triggered.

[24] The purpose of allowing an incoming order marked ''I'' to rest with an active sublevel designation is to permit an order sender to deactivate the MTP functionality for an incoming order, but to keep the MTP subgroup functionality alive once the order became a resting order.

[25] In this situation, the incoming offer would execute against resting opposite side order, if available, or post the CHX book. As discussed below, since the MTP modifier is not considered by the Matching System until all other modifiers are first considered, an incoming offer marked with an MTP modifier and MTP Action of ''O'' will execute against other resting opposite side orders, if available, or post the CHX book.

[26] *Id.*

[27] *Id.*

[28] *See* Article 1, Rule 2(b)(1) and (3).

[29] *See* Article 1, Rule 2(c).

[30] *See* Article 1, Rule 2(d).

[31] This rule filing will only address the interplay between the MTP modifier and other order modifiers. However, the Exchange notes that certain order modifiers are not compatible with other modifiers. Such incompatibilities are noted in Article 1, Rule 2 and in recent Rule 19b-4 rule filings that have dealt with order types and modifiers. *See* Securities Exchange Act Release No. 69538 (May 8, 2013), 78 FR 28671 (May 15, 2013) (SR–CHX–2013–10); *see also* Securities Exchange Act Release No. 69075 (March 8, 2013), 78 FR 16311 (March 14, 2013) (SR–CHX–2013–07).

proposed MTP modifier can only be triggered once all of the other order modifiers attached to an order have been considered. The following examples illustrate how this order modifier priority scheme would work when the proposed MTP modifier is paired with the ''Immediate Or Cancel'' (''IOC''),[32] ''Post Only,'' [33] or ''CHX Only'' [34] order modifiers.

Example 1. Assume that the Matching System receives an incoming limit buy order (''Bid A'') for 1,000 shares of security XYZ priced at $10.10/share that originated from MTP Trading Group D1 and is marked IOC and MTP, with an MTP Action of ''O'' and no MTP sublevel designation. Assume that the CHX book for security XYZ contains no resting bids, but does have two resting offers (''Offers A and B''). Assume that Offer A originated from MTP Trading Group C1 and is for 200 shares priced at $10.09/share. Assume that Offer B originated from MTP Trading Group D1 and is for 200 shares priced at $10.10/share. Assume also that the Offer A is the only Protected Quotation of any market at the National Best Offer (''NBO'') for security XYZ.

Under this Example 1, since Bid A is immediately executable against Offer A at $10.09, the IOC designation would not cancel Bid A. The Matching System would then consider the MTP Trading Groups of Bid A and Offer A because Bid A is marked ''MTP.'' Since Bid A and Offer A are from different MTP Trading Groups, MTP would not prevent an execution and Bid A would execute against Offer A at the full size of Offer A priced at $10.09/share. In turn, Bid A would be decremented by 200 shares and would have 800 unexecuted shares remaining.

The Matching System will then go through the same process with respect to Offer B. Since Offer B is at the limit price of Bid A, the IOC designation would not cancel Bid A. However, since Bid A and Offer B both originated from the same MTP Trading Group D1, the MTP functionality would prevent an execution and the MTP Action of ''O'' would require Offer B to be cancelled because it is the resting order. Consequently, the Matching System will go through the attached order modifiers once again to determine what to do with the unexecuted balance of Bid A. Since the CHX book no longer has any resting opposite side orders for security XYZ, the IOC designation would require the unexecuted balance of Bid A to be cancelled.

If Bid A instead had an MTP Action of ''N,'' the triggering of the MTP Action would have resulted in the unexecuted balance of Bid A (*i.e.,* 800 shares) being cancelled and Offer B remaining on the CHX book.

Example 2. Assume that the Matching System receives an incoming limit buy order (''Bid A'') for 1,000 shares of security XYZ priced at $10.10/share that originated from MTP Trading Group D1 and is marked Day, Post Only, and MTP, with an MTP Action of ''B'' and no MTP sublevel designation. Assume that the CHX book for security XYZ contains no resting bids, but does have one resting offer (''Offer A'') originated from MTP Trading Group D1 and is for 200 shares priced at $10.09/share. Assume also that the Offer A is the only Protected Quotation of any market at the NBO for security XYZ.

Under this Example 2, the Matching System would first determine the permissibility of the match against the Post Only modifier. Since Post Only orders cannot ''remove liquidity from the CHX book,'' Bid A would be cancelled because Bid A is an *incoming* order that would remove liquidity from the CHX book. Thus, Bid A would be cancelled before the Matching System would be able to consider the MTP Trading Groups of the contra-side orders.

Example 3. Assume that the Matching System receives a fully-displayable incoming limit buy order (''Bid A'') for 1,000 shares of security XYZ priced at $10.10/share that originated from MTP Trading Group D1 and is marked Day, CHX Only, and MTP, with an MTP Action of ''O'' and no MTP sublevel designation. Assume that the CHX book for security XYZ is empty. Assume also that the National Best Bid and Offer (''NBBO'') for security XYZ is $10.07 × $10.09 and the short sale price test restriction of Regulation SHO is not in effect.

Since the CHX book is empty with respect to security XYZ and the display of Bid A at $10.10 would cross the NBO at $10.09, the CHX Only Price Sliding Processes, specifically NMS Price Sliding,[35] would price slide Bid A to be ranked at $10.09 (*i.e.,* the NBB locking price) and displayed at $10.08 (*i.e.,* one price increment below the NBO). The new NBBO for security XYZ would be $10.08 × $10.09, with Bid A being the NBB. Once Bid A is price slid and posted to the CHX book, Bid A becomes a resting order.

If a subsequent incoming offer were to execute against Bid A, Bid A would receive the liquidity providing credit and the opposite side offer would pay the liquidity removing fee. Moreover, since there is no resting opposite side order to match against Bid A, the Matching System would not consider the MTP modifier and thus, MTP would not prevent an execution.

Example 4. Assume the same as Example 3 and the CHX book contains only Bid A and no other bids or offers. Assume that after Bid A was price slid, the Matching System receives an incoming limit sell order (''Offer A'') for 2,000 shares of security XYZ priced at $10.10/share that originated from MTP Trading Group D1 that is marked ''Do Not Display,'' [36] but is not marked by an MTP modifier. Thus, the CHX book as to security XYZ is now $10.08 × $10.10. Assume further that after Offer A posts to the CHX book, the NBO (which is not on CHX) moves away to $10.10 and thus, the NBBO for security XYZ changes from $10.08 x $10.09 to $10.08 × $10.10.

Pursuant to NMS Price Sliding, since the NBO moved away to $10.10, resting Bid A would be permitted to be ranked at its original limit price of $10.10 and displayed at $10.09. Since Offer A is resting undisplayed at $10.10, Bid A would be price slid into a price point that is already occupied by Offer A. Thus, Bid A would become an incoming order and, if executable against Offer A, would take liquidity from the CHX book. The Matching System would then verify the permissibility of the order execution against the order modifiers of the contra-side orders. Offer A has no order modifiers that would prevent an execution. On the opposite side, the CHX Only designation of Bid A would not prevent an execution. However, since Bid A is marked ''MTP'' and both contra-side orders originated from MTP Trading Group D1, MTP would be triggered. Moreover, since Bid A has an MTP Action of ''O,'' the resting order would be cancelled. Thus, Offer A would be cancelled and Bid A would be ranked at $10.10 and displayed at $10.09. Consequently, the new NBBO for security XYZ would be $10.09 × $10.10, where Bid A becomes the NBB.

Example 5. Assume the same as Example 4, except that Bid A was also marked Post Only. Thus, Bid A was marked Day, CHX Only, Post Only, and MTP, with an MTP Action of ''O'' and no MTP sublevel designation. Since a Post Only order will be immediately cancelled if the order is price slid into a price point already occupied by

[32] Article 1, Rule 2(d)(4) defines ''Immediate Or Cancel,'' in pertinent part, as ''a modifier that requires an order to be executed, either in whole or in part and for limit orders, at or better than its limit price, as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled.

[33] Article 1, Rule 2(b)(2)(D) defines ''Post Only'' as follows (emphasis added):

''''Post Only': a limit order modifier that requires an order to be posted on the Exchange and not routed away to another trading center.

A limit order marked Post Only shall be deemed to have been received ''Do Not Route,'' as defined under paragraph (b)(3)(A), which cannot be overridden by the order sender.

A Post Only order will be immediately cancelled under the following circumstances:

(i) *The Post Only order would remove liquidity from the CHX book;* or

(ii) At the time of order entry, the Post Only order would lock or cross a Protected Quotation of an external market; provided, however, that if the Post Only order is marked ''CHX Only'' and is eligible for the CHX Only Price Sliding Processes, pursuant to Article 1, Rule 2(b)(1)(C), the Post Only order that would lock or cross a Protected Quotation of an external market shall be subject to the CHX Only Price Sliding Processes or Limit Up-Limit Down Price Sliding, pursuant to Article 20, Rule 2A(b), whichever is applicable, and shall not be immediately cancelled.''

[34] ''CHX Only'' is a limit order modifier that requires an order (1) to be ranked and executed on the Exchange without routing away and (2) to be eligible for the CHX Only Price Sliding Processes. The CHX Only Price Sliding Processes will reprice, re-rank and/or re-display certain CHX Only orders multiple times depending on changes to the National Best Bid and Offer (''NBBO'') (the repricing of CHX Only sell short orders subject to Rule 201 of Regulation SHO is dependent solely on declines to the National Best Bid (''NBB'')), so long as the order can be ranked and displayed in an increment consistent with the provisions of Regulation NMS and Rule 201 of Regulation SHO, until the order is executed, cancelled or the original limit price is reached. *See* Article 1, Rule 2(b)(1)(C).

[35] *See* Article 1, Rule 2(b)(1)(C)(i).

[36] Article 1, Rule 2(c)(2) provides that ''Do Not Display'' is ''a modifier, for orders of at least 1,000 shares when entered, that requires the order not be displayed in whole or in part.''

an opposite side order, unlike Example 4, Bid A would be cancelled pursuant to the Post Only modifier before the Matching System would consider the MTP modifier. Thus, under this Example 5, price slid Bid A would be cancelled and Offer A would remain on the CHX book undisplayed.

2. Statutory Basis

The Exchange submits that the proposed rule changes to adopt an MTP functionality is consistent with Section 6(b) of the Act in general [37] and furthers the objectives of Section 6(b)(5) in particular,[38] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and, in general, by protecting investors and the public interest. Specifically, the proposed MTP functionality will allow order senders to better manage order flow and prevent undesirable executions against themselves. Additionally, the proposed MTP modifier will streamline certain regulatory functions of the Exchange by reducing false positive results that may occur on Exchange-generated wash trading surveillance reports when orders are executed under the same account symbol. Consequently, the proposed adoption of the MTP functionality will benefit Exchange customers by improving fill rates and promoting competition among market centers offering similar products and services, which is consistent with the aforementioned objectives of Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does believe that the proposed rule change will have an impact on competition. However, the Exchange does not believe that the proposed rule change will impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act. To the contrary, the proposed MTP functionality should act as a positive force for competition by providing an alternative to similar functionality offered by other Exchanges, such as the ''Match Trade Prevention Modifiers'' offered by BATS.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [39] and Rule 19b–4(f)(6) thereunder.[40] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [41] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[42] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative as of December 2, 2013. The Exchange requested such waiver so that it may offer Participants the proposed MTP functionality earlier. The Exchange stated that its proposal does not propose any new policies or provisions that are unique or unproven, as all changes proposed are changes to the Exchange's rules based on the rules of another self-regulatory organization, BATS Y-Exchange (''BYX''), or modified versions of the corresponding BYX rules, as described in further detail in the filing. According to the Exchange, the proposed MTP functionality and the BATS–Y ''Match Trade Prevention Modifiers'' are both designed to streamline certain regulatory functions of the Exchange by reducing false positive results that may occur on Exchange-generated wash trading surveillance reports when orders are executed under the same account symbol. Thus, the Exchange believes that it is in the interest of protecting investors to provide the new functionality at the earliest time possible. Based on the Exchange's statements, the Commission believes that waiving the operative delay as of December 2, 2013 is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative as of December 2, 2013.[43]

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 under Section 19(b)(2)(B) [44] of the Act 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–CHX–2013–20 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–CHX–2013–20. 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

[39] 15 U.S.C. 78s(b)(3)(A)(iii).

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)..

[42] 17 CFR 240.19b–4(f)(6)(iii).

[43] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78s(b)(2)(B).

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–CHX–2013–20, and should be submitted on or before December 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28848 Filed 12–2–13; 8:45 am]

BILLING CODE 8011–01–P

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70946; File No. SR–NSCC–2013–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide Its Members With a Risk Management Tool That Would Enable Members To Monitor Trading Activity and Receive Notifications When Pre-Set Trading Limits are Reached

November 26, 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 November 15, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Item I, II and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consist of amendments to the Rules & Procedures (''Rules'') of NSCC to provide NSCC Members with a risk management tool that would allow those Members to monitor trading activity and would deliver to them notifications when pre-set trading limits are reached, as more fully described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

In connection with recent industry-wide efforts to develop tools and strategies to mitigate and address the risks associated with the increasingly complex, interconnected, and automated market technology,[3] NSCC has developed a risk management tool, called ''DTCC Limit Monitoring,'' that would provide its Members with post-trade surveillance.[4] The proposed DTCC Limit Monitoring would provide NSCC's Members with a tool to monitor the intraday clearing activity of their own trading desks and the intraday clearing activity for their correspondents and clients. The tool would send out alerts to those Members when pre-set trading limits with respect to this clearing activity is being approached and is reached, allowing them to monitor exposure of this trading activity, and providing them with notice when there is an unusual or unexpected spike in trading activity that could indicate a trading error, or that a customer is trading outside the limits set by its clearing firm.

[3] While other market participants may be developing additional risk management tools in connection with these recent industry-wide efforts, the proposed DTCC Limit Monitoring would be separate from and would operate completely independently from any such tools.

[4] For the purposes of this proposed rule change, ''post-trade'' refers to the period in a transaction life cycle after it has been submitted to NSCC for clearing and settlement.

DTCC Limit Monitoring Proposal Overview

Pursuant to this filing, NSCC proposes to amend its Rules to create DTCC Limit Monitoring, a risk management tool that would enable Members to monitor both their own intraday trading activity and the intraday trading activity of their correspondents and/or clients. DTCC Limit Monitoring would be available to all NSCC Members. The effectiveness of DTCC Limit Monitoring in addressing risk depends on its use by NSCC Members, particularly those Members that clear for other firms, and depends on their inclusion of the tool within their broader risk management strategies. As such, NSCC is proposing to require that the following NSCC Members register for DTCC Limit Monitoring: (1) any NSCC full service Member that clears for others; (2) any NSCC full service Member that submits transactions to NSCC's trade capture system either as a Qualified Special Representative (''QSR'') or Special Representative, pursuant to Procedure IV (Special Representative Service); and (3) any NSCC full service Member that has established a 9A/9B relationship in order to allow another NSCC Member (either a QSR or Special Representative) to submit locked in [sic] trade data on its behalf. NSCC Members would incur minimal, if any, cost to implement DTCC Limit Monitoring. The tool would provide NSCC Members with an additional method to monitor the post-trade activity of their own trading desks and the activity of their correspondents and/or clients.

DTCC Limit Monitoring would provide NSCC Members with: (i) post-trade data relating to unsettled equity and fixed income securities trades for a given day that have been compared or recorded through NSCC's trade capture mechanisms on that day (''LM Trade Date Data''), and (ii) other information based upon data the participating Member may itself provide at start of or throughout the day (''LM Member-provided Data''), as provided in the Rules governing DTCC Limit Monitoring (LM Trade Date Data and LM Member-provided Data shall collectively be referred to as ''LM Transaction Data''). Members registered for DTCC Limit Monitoring would be permitted to input or load trade information from prior days to the system on their own to supplement their view of overall risk exposure, and to monitor their trading exposure.

Description of DTCC Limit Monitoring

Through DTCC Limit Monitoring, NSCC would utilize market transactions and other information to report post-trade activity to Members. Members would only receive data related to their own trading desks and the activity of their correspondents and/or clients. Such reporting would incorporate transactions (defined above as LM Trade Date Data) in equity, and municipal and corporate debt securities after such transactions have: (i) passed through NSCC's edit checks, i.e., validated, and not been pended or rejected, and (ii) been recorded or compared through NSCC's Universal Trade Capture and/or Real-Time Trade Matching trade capture and comparison systems. In addition, DTCC Limit Monitoring would allow Members to input or load start of day and/or intra-day positions (defined above as LM Member-provided Data) so as to be able to view their organization's (or one or more of their correspondents' or clients') aggregate open positions in securities cleared through NSCC.

Within DTCC Limit Monitoring, Members would be required to create ''Risk Entities,'' as described further below, to track such activity for their correspondents and clients, as well as their own trading desks, and define the rules for the aggregation of trade data, set trading limits on open positions allowable for each Risk Entity, and receive alerts for the display of breaches or near breaches of the trading limits. DTCC Limit Monitoring would provide a screen-based view for individual Members of their trade data residing in DTCC Limit Monitoring for a given day aggregated and organized according to trading limits set by the Member. Displays provided to Members would offer Members the option to view aggregate and net value across markets and other liquidity destinations, as well as provide them an ability to see exposure at the CUSIP and individual trade levels. In conformance with NSCC's Rule 49 (Release of Clearing Data and Clearing Fund Data), each Member would only be able to view information with respect to its own clearing account(s).

DTCC Limit Monitoring would be a reporting tool only and any action by a Member as a result of any alerts, or other information associated with the risk management tool would be at the discretion of the Member and would not, nor imply that any such action was effected, either in whole or part, by NSCC. Furthermore, alerts that an established trading limit has been breached would not automatically trigger a block by NSCC on any activity processed through NSCC's clearance and settlement systems.

Procedural Considerations of DTCC Limit Monitoring

A. *Establishing and Maintaining Risk Entities and Limits*

As an initial step in utilizing DTCC Limit Monitoring, Members would establish Risk Entities. These might include the trading activity of a single desk, a correspondent, a single clearing number within the Member's NSCC account structure, or the overall firm. Members required to use DTCC Limit Monitoring would be required to create a Risk Entity for their own trading desks as well as for all correspondents and clients for which they clear trades through NSCC. DTCC Limit Monitoring would provide Members with the ability to create Risk Entities through the definition and updating of the data structure and relationships for the entities to which they assign a trading limit at a net notional value.[5] These trading limits are also referred to in the proposed Rules governing DTCC Limit Monitoring as ''parameters.'' The Risk Entity definitions entered by Members would drive position calculations and displays in DTCC Limit Monitoring. DTCC Limit Monitoring would provide Members with a facility to set dollar limits with respect to each Risk Entity at a net notional level, and it may provide for additional limits as NSCC determines from time to time.

Members would be required to review reports and alerts on an on-going basis and, as necessary, modify established trading limits to reflect current trading activities within each of their Risk Entities. Changes made by Members with respect to established trading limits would be made in real time. All other updates and changes made by Members to their Risk Entities would take effect overnight. While Members would ultimately be responsible for ensuring that the trading limits set on trading activity are appropriate, NSCC staff would be able to review trade activity reports and alerts, and, at its discretion, may contact Members to discuss any concerns, for example if the established trading limits are not aligned with recent average trading activity. Members would be required to identify contacts within their firms for these purposes.

B. *Limit Monitoring Function*

DTCC Limit Monitoring would aggregate and make available position information for purposes of the Member's limit monitoring. The aggregate data would be the sum of: (a) LM Member-provided data, and (b) LM Trade Date Data, with the aggregated data referred to in the Rules as LM Transaction Data. Under the proposal, LM Trade Date Data, LM Member-provided Data, and other relevant data would be aggregated and sorted, and the data would then be displayed to the Member.

The totals would be compared to the trading limits set by the Members and the Members would be alerted to breaches based upon these limits. NSCC would set ''early warning'' limits at 50%, 75%, and 90% of the trading limits set by Members for each Risk Entity. Members may elect to receive early warning and breach alerts through on-screen interface within the DTCC Limit Monitoring, an email alert, and/or an automated electronic message. DTCC Limit Monitoring would also provide updated information when the alert is resolved (i.e., when the Risk Entity is within the relevant limit, for example, as a result of an offsetting transaction reducing the position or the Member raises the limit for a Risk Entity). Information such as alert history, Members' Risk Entity definitions, end of day positions, and other data as NSCC provides from time to time would be supplied to Members in reports delivered both daily, in an end-of-day report, and monthly. Members would be required to identify primary and secondary contacts within their firm to receive alerts and these reports.

C. *No Effect on Trade Guaranty and Other Considerations*

The proposed rule change would provide that any reports and data supplied to Members through DTCC Limit Monitoring are not intended to impact the timing or status of NSCC's guaranty of any transaction in CNS or Balance Order Securities. In addition, the issuance of information or data through DTCC Limit Monitoring to Members, or lack thereof, would not of itself indicate or have any bearing on the status of any trade, including but not limited to, as compared, locked-in, validated, guaranteed, or not guaranteed.

D. *Limitation of Liability*

DTCC Limit Monitoring would provide Members with a risk management tool in which they can review and monitor trade activity in a manner they select, and providing Members with the ability to populate the system by inputting or loading positions, defining Risk Entities and setting related limits, and receiving alerts and position data of their

[5] ''Net notional'' means the sum of the absolute value of exposure for each ticker security symbol. For example, a firm that is net long in Company X for $50,000 and net short position in Company Z for $100,000 has $150,000 in net notional exposure.

choosing, for example. Accordingly, since NSCC would not be the originator of information made available through DTCC Limit Monitoring, the proposed Rule [sic] would provide that NSCC is not responsible for the completeness or accuracy of LM Trade Date Data or other information or data which it receives from Members or third parties and which is utilized in DTCC Limit Monitoring or received and compared or recorded by NSCC, nor for any errors, omissions, or delays which may occur in the transmission of such data or information. In addition, not all transactions are submitted to NSCC on a real-time basis, thus NSCC can only provide Members using DTCC Limit Monitoring with LM Trade Date Data as it is compared or recorded. Accordingly, Members should be aware that such LM Trade Date Data may not be complete.

E. *Indemnification*

Since each Member may use the information in DTCC Limit Monitoring for purposes of its own discretion, the proposed rule change would provide that any Member that registers for DTCC Limit Monitoring shall indemnify NSCC, and any of its employees, officers, directors, shareholders, agents, and participants who may sustain any loss, liability, or expense as a result of a third party claim related to any act or omission of the Member made in reliance upon data or information transmitted by NSCC to the Member through DTCC Limit Monitoring.

Implementation Timeframe

Following regulatory approval, NSCC would implement the changes set forth in this filing on a date no earlier than ten (10) days following notice to Members through issuance of an NSCC Important Notice.

Proposed Rule Changes

NSCC proposes to create a new Rule 54 (DTCC Limit Monitoring) and Procedure XVII (DTCC Limit Monitoring) to reflect the proposed rule changes described above. The proposed rule change would also amend Rule 58 (Limitations of Liability) to reflect the limitation of liability provision described above. In addition, Rule 1 (Definitions) would be updated to include definitions for LM Trade Date Data, LM Member-provided Data, and LM Transaction Data.

2. Statutory Basis

The proposed DTCC Limit Monitoring will facilitate the prompt and accurate clearance and settlement of securities transactions by providing NSCC's Members with a mechanism to monitor post-trade activity on an intra-day basis and thereby allow for enhanced risk management by those Members. Therefore, NSCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC, in particular Section 17A(b)(3)(F) of the Act,[6] which requires that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Clearing Agency's Statement on Burden on Competition

As stated above, the proposed DTCC Limit Monitoring would provide Members with a mechanism with which to monitor post-trade activity on an intra-day basis and, thereby, allow for enhanced risk management by those Members. NSCC believes that the effectiveness of DTCC Limit Monitoring in addressing risk depends on its use by NSCC Members, particularly those Members that clear for other firms, and depends on their inclusion of the tool within their broader risk management strategies. Approximately 85% of NSCC's Members would be required to use DTCC Limit Monitoring under the proposed rule change. NSCC Members would incur minimal, if any, cost in implementing DTCC Limit Monitoring. Therefore, NSCC does not believe that the proposed rule change would impose any burden on competition.

Furthermore, because NSCC believes that any impact DTCC Limit Monitoring has in addressing risk would facilitate the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest, in furtherance of the requirements of the Act applicable to NSCC, any burden on competition the proposed rule change is perceived as imposing would be both necessary and appropriate in furtherance of the purposes of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

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 a 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–NSCC–2013–12 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–NSCC–2013–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site (*http://dtcc.com/legal/rule_filings/nscc/2013.php*).

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–NSCC–2013–12 and should be submitted on or before December 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28846 Filed 12–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70945; File No. SR–NASDAQ–2013–142]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify a Level 2 Subscriber Fee

November 26, 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 November 14, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify the NASDAQ Level 2 Professional Subscriber fee set forth in NASDAQ Rule 7023(b)(1)(B). NASDAQ will implement the proposed revised fee on January 1, 2014.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are bracketed.[3]

* * * * *

7023. NASDAQ Depth-of-Book Data

(a) No change.

(b) Subscriber Fees.

(1) NASDAQ Level 2

(A) No change.

(B) Professional Subscribers pay a monthly fee of $4[0]*5* each for Display Usage based upon Direct or Indirect Access, or for Non-Display Usage based upon Indirect Access only;

(C)–(E) No change.

(2)–(4) No change.

(c)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing a change to modify the NASDAQ Level 2 Professional Subscriber fee (''Level 2 fee'') as set forth in NASDAQ Rule 7023(b)(1)(B). NASDAQ Rule 7023(b)(1)(B) currently provides for a monthly fee of $40 for Professional Subscribers each for any Display Usage based upon Direct or Indirect Access, or for Non-Display Usage based upon Indirect Access only. Specifically, NASDAQ proposes to increase this display fee from $40 per month to $45 per month. NASDAQ Level 2 Non-Professional Subscriber fees will remain unchanged.

The NASDAQ Level 2 product is completely optional. NASDAQ has enhanced this product through capacity upgrades and regulatory data sets over the last approximately 30 years, but has only once increased the associated Professional Subscriber fee.[4] During this time period, the network capacity for NASDAQ Level 2 has increased from a 56 Kb feed in 1983 to the current 30 Mb feed. Additionally, since NASDAQ Level 2 is also used for market making functions, NASDAQ has invested over the years to add regulatory data sets, such as Market Maker Mode and Trading Action status. Such investments are expected to continue in 2014 by the addition of enhanced Symbol Directory and IPO messaging, as well as latency monitoring tools to the feed. Aside from the one other Level 2 Subscriber fee change previously mentioned, the only other usage fee change NASDAQ has made in the last approximately 30 years was to add a Non-Professional fee option for NASDAQ Level 2, which is widely used by online brokerage firms today. As noted above, this increase represents only the second Professional Subscriber price change for display usage of NASDAQ Level 2 user fees since its introduction in 1983.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of NASDAQ data and is not designed to permit unfair discrimination between them. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by lessening the regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://NASDAQomx.cchwallstreet.com/.*

[4] *See* Securities Exchange Act Release No. 68493 (December 20, 2012), 77 FR 76574 (December 28, 2012) (SR–NASDAQ–2012–133).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

own internal analysis of the need for such data.[7]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers (''BDs'') at all, it follows that the price at which such data is sold should be set by the market as well. Level 2 is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all self-regulatory organization (''SRO'') rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[8]

For the reasons stated above, NASDAQ believes that the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule, and the fee schedules of other exchanges. These distinctions (top-of-book versus Depth-of-Book, Professional versus non-Professional Subscribers, Direct versus Indirect Access, Internal versus External Distribution) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed product is entirely optional to all parties. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

NASDAQ believes that periodically it must adjust the Depth-of-Book Subscriber fees to reflect market forces. Given that this fee change represents only the second Professional Subscriber price change for display usage of NASDAQ Level 2 user fees since its introduction in 1983, NASDAQ believes it is an appropriate time to adjust this fee to more accurately reflect the investments made to enhance this product through capacity upgrades and regulatory data sets added. This also reflects that the market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[8] *NetCoalition I,* at 535.

revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition,* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, NYSE Arca LLC, BATS Exchange, Inc. (''BATS'') and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing Depth-of-Book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes

trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the Depth-of-Book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its ''Bookviewer'' to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and/Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for market data have remained flat. In fact, as a percent of total Subscriber costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for Depth-of-Book information is significant and the Exchange believes that this proposal itself clearly evidences such competition. NASDAQ is increasing the fee in order to keep pace with changes in the industry and evolving customer needs. This product is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–142 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–NASDAQ–2013–142. 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

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

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 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–NASDAQ–2013–142, and should be submitted on or before December 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28845 Filed 12–2–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later n February 3, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration—20 CFR 404.1720 and 404.1725; 20 CFR 416.1520 and 416.1525—0960–0104. SSA attorney and non-attorney claimant representatives use Form SSA–1560–U4 to petition SSA for authorization to charge and collect a fee. Claimants may also use this form to agree with or contest the requested fee amount or other information the representative provided on the form. SSA officials use the form to determine a reasonable fee amount representatives may charge for their services. The respondents are attorneys and non-attorneys who represent Social Security claimants and their claimants.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1560–U4	48,110	1	30	24,055

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 2, 2014. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Continuing Disability Review Report—20 CFR 404.1589, 416.989—0960–0072. Sections 221(i), 1614(a)(3)(H)(ii)(I), and 1633(c)(1) of the Social Security Act require SSA to periodically review the cases of individuals who receive disability benefits under Title II or Title XVI to determine if the individuals' disabilities continue. SSA uses Form SSA–454, Continuing Disability Review Report, to complete the review for continuing disability. SSA considers adults eligible for payment if they continue to be unable to do substantial gainful activity because of their impairments, and we consider Title XVI children eligible for payment if they have marked and severe functional limitations because of their impairments. SSA also uses Form SSA–454 to obtain information on sources of medical treatment; participation in vocational rehabilitation programs (if any); attempts to work (if any); and if individuals believe their conditions have improved. The respondents are Title II or Title XVI disability recipients or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–454–BK (Paper version)	270,500	1	60	270,500
Electronic Disability Collect System	270,500	1	60	270,500

[10] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Totals	541,000			541,000

2. Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127. Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) payments but whose resources exceed the allowable limit may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayments. SSA uses Form SSA–8060–U3 to document this agreement, and to ensure the individuals understand their obligations. Respondents are applicants for and recipients of SSI payments who will be disposing of excess non-liquid resources.

Note: We inadvertently posted the incorrect burden hours on September 12, 2013 at 78 FR 56265, we are correcting the error here.

Type of Request: Revision of an OMB-approved information collection.

Modality of Completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8060–U3	20,000	1	10	3,333

3. Development for Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 404.327, 404.328, 416.1338(c)(d), 416.1320(d), 416.1331(a)–(b), and 416.1338–0960–0282. State Disability Determination Services (DDS) must determine if Social Security disability payment recipients whose disability ceased and who participate in vocational rehabilitation programs may continue to receive disability payments. To do this, DDSs need information about the recipients, the types of program participation, and the services they receive under the rehabilitation program. SSA uses Form SSA–4290 to collect this information. The respondents are State employment networks, vocational rehabilitation agencies, or other providers of educational or job training services.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4290	3,000	1	15	750

Date: November 26, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–28823 Filed 12–2–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8540]

Bureau of Political-Military Affairs; Administrative Debarment of LeAnne Lesmeister Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed administrative debarment pursuant to section 127.7(a) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 to 130) on LeAnne Lesmeister.

DATES: *Effective Date:* November 25, 2013. (*Date of signature of the Order*)

FOR FURTHER INFORMATION CONTACT: Sue Gainor, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632–2798.

SUPPLEMENTARY INFORMATION: The International Traffic in Arms Regulations (''ITAR''), the implementing regulations of Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778), regulate the export and temporary import of defense articles and defense services. Section 127.7(a) of the ITAR authorizes the Assistant Secretary of State for Political-Military Affairs to debar any person who has been found, pursuant to part 128 of the ITAR, to have committed a violation of the AECA or the ITAR of such character as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the AECA or ITAR in the future. Such debarment prohibits the subject from participating directly or indirectly in any activities that are subject to the ITAR.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 126.7, 127.1(d), and 127.11(a)). The Department of State applies a presumption of denial for licenses or other approvals involving such persons as described in ITAR section 127.11.

Pursuant to section 38 of the AECA and section 128.3 of the ITAR, on July 15, 2013, the Department of State initiated administrative proceedings, by means of a charging letter, against LeAnne Lesmeister to impose debarment in accordance with section 127.7 of the ITAR. (The United States Department of State, Docket # 13–DOS–0001). Ms. Lesmeister was charged with twenty-one violations in connection with the creation and use of export control documents containing false statements or omitting and misrepresenting material facts for the

purpose of exporting, retransferring, or furnishing defense articles, technical data, or defense services, and causing the unauthorized export of technical data and provision of defense services, all in violation of section 38 of the AECA and section 127 of the ITAR.

Ms. Lesmeister, by and through her position of authority as an export compliance officer and empowered official at Honeywell International, Inc., created export control documents purporting to be authorized by the Department of State and presented those fabrications to her employer as valid Department of State authorizations. In this manner, Ms. Lesmeister caused her employer to rely on the falsified authorizations in the export of defense articles, including technical data, and provision of defense services without the requisite authorizations, all in violation of the AECA and ITAR.

Due to Ms. Lesmeister's failure to answer the charges as provided in section 128.5(a) of the ITAR, the Department referred the case to an Administrative Law Judge for consideration, in accordance with section 128.4 of the ITAR. Pursuant to section 128.3 of the ITAR and the Default Order of the Administrative Law Judge, dated October 29, 2013, Ms. Lesmeister's failure to answer the charges constituted an admission of the truth of the charges.

Section 128.4 of the ITAR provides for a respondent's ability to petition to set aside defaults upon showing good cause; however, the filing of such a petition does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

On November 25, 2013, as the result of the established violations and pursuant to section 127.7 of the ITAR, LeAnne Lesmeister was administratively debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years, until November 25, 2016; Reinstatement after November 25, 2016 is not automatic. At the end of the debarment period, Ms. Lesmeister may apply for reinstatement. Until licensing privileges are reinstated, Ms. Lesmeister will remain debarred. No civil penalties have been imposed at this time.

This notice is provided to make the public aware that the person listed above is prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR.

Further, pursuant to section 120.1(d) of the ITAR, persons with knowledge that another person is ineligible must obtain authorization from the Directorate of Defense Trade Controls prior to, directly or indirectly and in any manner or capacity, applying for, obtaining, or using any export control document for such ineligible person, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing or participating in any manner in any transaction that may involve any defense article, which includes technical data, defense services, or brokering activities, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedures Act. Because the exercise of this foreign affairs function is highly discretionary, it is excluded from review under the Administrative Procedures Act.

Dated: November 25, 2013.

Tom Kelly,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2013–28917 Filed 12–2–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 8539]

Activities of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a meeting of the Department of State's International Telecommunication Advisory Committee (ITAC) to review the activities of the committee over the last quarter and prepare for activities in the next quarter.

The ITAC will meet on December 19, 2013 at 2 p.m. EST to review the preparations for and outcomes of international telecommunications meetings of the International Telecommunication Union, the Inter-American Telecommunications Commission, the Organization for Economic Cooperation and Development, and the Asia Pacific Economic Cooperation Telecommunications and Information Working Group over the last quarter, and announce preparations for similar activities for the next quarter.

In particular, preparations for the World Telecommunications Development Conference, the Plenipotentiary Conference, and the Ten year review of implementation of the World Summit on the Information Society outcomes will be discussed.

Details on this ITAC meeting, including the meeting location, will be announced on the Department of State's email list, I*TAC@lmlist.state.gov.* Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents.

Subscription to the ITAC list is open. Persons wishing to participate in the ITAC list, desiring further information on this or other preparatory meetings, including those wishing to request reasonable accommodation to attend the meeting, should contact the Secretariat at *minardje@state.gov.*

Attendance at these meetings is open to the public as seating capacity allows. The public will have an opportunity to provide comments at these meetings at the invitation of the chair. A conference bridge will be provided to those people outside the Washington Metro area who request it from the secretariat.

Dated: November 25, 2013.

Cecily Holiday,

Foreign Affairs Officer, International Communications & Information Policy, U.S. Department of State.

[FR Doc. 2013–28919 Filed 12–2–13; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Corporate Flight Management, Inc., for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2013–11–21); Docket DOT–OST–2013–0061.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Corporate Flight Management, Inc., fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than December 17, 2013.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2013–0061 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: November 25, 2013.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2013–28878 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending Novermber 16, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–0066.

Date Filed: November 12, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 3, 2013.

Description: Application of Hainan Airlines Co., Ltd. requesting the Department amend its foreign air carrier permit to enable it to engage in scheduled air transportation of persons, property and mail between Beijing, People's Republic of China (PEK), on the one hand, and Boston, Massachusetts (BOS), on the other hand. Hainan Airlines also requests exemption authority to the extent necessary so that it may exercise the rights requested in this application prior to the issuance of an amended foreign air carrier permit.

Docket Number: DOT–OST–2013–0197.

Date Filed: November 14, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 5, 2013.

Description: Application of Wow Air ehf requesting exemption authority and a foreign air carrier permit to enable it to engage in (a) foreign scheduled and charter air transportation of persons, property and mail between points behind Iceland, via Iceland and intermediate points, and any point or points in the United States and beyond; (b) foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (c) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (d) foreign scheduled and charter air transportation of cargo between any point or points in the United States and any other point or points; (e) scheduled and charter transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Community; and (f) other charters pursuant to the prior approval requirements.

Docket Number: DOT–OST–2013–0200.

Date Filed: November 14, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 5, 2013.

Description: Application of Compagnie Aerienne Interregionale Express (CAIRE) dba Air Guyane Express/Air Antilles Express requesting a foreign air carrier permit and exemption authority to engage in scheduled and charter foreign air transportation of passengers, cargo and mail to/from Guadeloupe, Martinique and St. Martin to/from San Juan, Puerto Rico.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–28876 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Program Management Committee

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

ACTION: Notice of RTCA Program Management Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee.

DATES: The meeting will be held December 18, from 8:30 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a Program Management Committee meeting. The agenda will include the following:

December 18

- Welcome and Introductions.
- Review/Approve Meeting Summary.
- August 12, 2013, RTCA Paper no. 203–13/PMC–1129.
- Publication Consideration/Approval.
- Final Draft, New Document, Aeronautical Mobile Airport Communications System (AeroMACS) Profile, RTCA Paper No. 199–13/PMC–1125, prepared by SC–223.
- Final Draft, New Document, Minimum Operational Performance Standards (MOPS) for the Aeronautical Mobile Airport Communication System (AeroMACS), RTCA Paper No. 200–13/PMC–1126, prepared by SC–223.

- Final Draft, Revised Document, DO–230C—Integrated Security System Standard for Airport Access Control, RTCA Paper No. 204–13/PMC–1130, prepared by SC–224.
- Final Draft, New Document, Certification Test Guidance for Small and Medium Rechargeable Lithium Batteries and Battery Systems, RTCA Paper No. 13/PMC–, prepared by SC–225.
- Final Draft, Revised DO–214, Audio Systems Characteristics and Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment, RTCA Paper No. 232–13/PMC–1137, prepared by SC–226.
- Integration and Coordination Committee (ICC).
- Action Item Review.
- SC–228—Minimum Performance Standards for Unmanned Aircraft Systems—Discussion—Revised Terms of Reference.
- PMC Ad Hoc—Standards Overlap and Alignment—Discussion—Status.
- PMC Ad Hoc—Part 23 ARC Report—Areas/Recommendations for RTCA Support—Discussion—Status.
- RTCA Policy on Propriety Information—Discussion.
- Discussion.
- SC–206—Aeronautical Information Services (AIS) and Meteorological Data Link Services—Discussion—Revised Terms of Reference.
- SC–222—Inmarsat AMS(R)S—Discussion—Revised Terms of Reference.
- SC–217—Aeronautical Databases—Discussion—Revised Terms of Reference and SWIM Presentation.
- Emergency Locator Transmitters (ELTs)—Discussion—Possible New Special Committee to Update DO–204A—Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT).
- Ground Proximity Warning Equipment—Discussion—Possible New Special Committee to Update DO–161A—Minimum Performance Standards—Airborne Ground Proximity Warning Equipment.
- Airborne Weather Radar—Discussion—Possible New Special Committee to Update DO–220—Minimum Operational Performance Standards (MOPS) for Airborne Weather Radar with Forward-Looking Windshear Detection Capability.
- NAC—Status Update.
- FAA Actions Taken on Previously Published Documents—Report.
- Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review.
- European/EUROCAE Coordination—Status Update.
- Other Business.
- Schedule for Committee Deliverables and Next Meeting Date.
- 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 November 26, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–28944 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2013–0002–N–23]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on September 16, 2013 (78 FR 56995).

DATES: Comments must be submitted on or before January 2, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 16, 2013, FRA published a 60-day notice in the **Federal Register** soliciting comment on these ICRs for which the agency is seeking OMB approval. 78 FR 56995. FRA received no comments in response to this notice pertaining to the two renewal collections of information referenced below.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication of this Notice to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requests (ICRs) and the expected burden being submitted for clearance by OMB as required by the PRA.

Title: Railroad Communications.

OMB Control Number: 2130–0524.

Type of Request: Extension with change of a previously approved collection.

Affected Public: Businesses.

Abstract: The Federal Railroad Administration (FRA) amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to re-title this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio

terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule establishes safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

Form Number: N/A.

Total Annual Estimated Burden Hours: 337,717 hours.

Title: Safety Integration Plans.

Type of Request: Extension without change of a previously approved collection.

Abstract: The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB), working in conjunction with each other, have issued joint final rules establishing procedures for the development and implementation of safety integration plans (''SIPs'' or ''plans'') by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA uses the information collected, notably the required SIPs, to maintain and promote a safe rail environment by ensuring that affected railroads (Class Is and some Class IIs) address critical safety issues unique to the amalgamation of large, complex railroad operations.

Form Number(s): N/A.

Total Annual Estimated Burden Hours: 528 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira-submissions@omb.eop.gov*.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on November 26, 2013.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2013–28856 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on August 13, 2013 (78 FR 49324).

DATES: Comments must be submitted on or before January 2, 2014.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance (NVS–223), National Highway Traffic Safety Administration, West Building—4th Floor-Room W43–481, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration.

Title: Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.

OMB Number: 2127–0002.

Type of Request: Extension of a Currently Approved Collection.

Abstract: The National Highway Traffic Safety Administration (NHTSA) has requested OMB to extend that agency's approval of the information collection that is incident to NHTSA's administration of the regulations at 49 CFR parts 591, 592, and 593 that govern the importation of motor vehicles and motor vehicle equipment. The information collection includes declarations that are filed (on the HS–7 Declaration form) with U.S. Customs and Border Protection (CBP) upon the importation of motor vehicles or motor vehicle equipment that is subject to the Federal motor vehicle safety, bumper, and theft prevention standards administered by NHTSA. The information collection also includes the Department of Transportation (DOT) conformance bond that is furnished to CBP (on form HS–474) for each motor vehicle offered for importation that does not conform to all applicable Federal motor vehicle safety standards (FMVSS). The bond ensures that such vehicles are brought into conformity with those standards within 120 days from the date of entry or are exported from, or abandoned to, the United States. The information collection also includes paperwork that must be submitted to NHTSA and in some instances retained by registered importers (RIs) of motor vehicles that were not originally manufactured to comply with all applicable FMVSS. These items include information that a person or business entity must submit to NHTSA to be registered as an RI and to retain that status. The paperwork also includes the statement of conformity that an RI must submit to NHTSA following the completion of conformance modifications on an imported nonconforming vehicle to obtain release of the DOT conformance bond furnished for the vehicle at the time of entry. Also included is the petition that an RI or manufacturer may submit to NHTSA for the agency to decide that a vehicle that was not originally manufactured to comply with all applicable FMVSS is capable of being modified to conform to those standards and is therefore eligible for importation under 49 U.S.C. 30141. The information collection also includes applications that are filed with NHTSA for permission to import nonconforming vehicles for purposes of research, investigations, demonstrations, training, competitive racing events, and show or display, as well as applications requesting the agency to recognize vehicles manufactured for racing purposes as being qualified to be imported as vehicles that were not primarily manufactured for use on public roads, precluding the need for those vehicles to comply with the FMVSS. This information collection is necessary to ensure that motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards are lawfully imported into the United States and that RIs and applicants for RI status are capable of meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles.

Affected Public: Individuals and commercial entities that import motor vehicles or motor vehicle equipment subject to the FMVSS and vehicles that are not primarily manufactured for use on public roads, as well as applicants for RI status and existing RIs.

Estimated Total Annual Burden: 61,882 hours; $2,415,873.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on November 23, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–28875 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2013–0129]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 3, 2014.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2013–0129] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the dockets. Alternately, you may visit in person the Docket Management Facility at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance (NVS–223), National Highway Traffic Safety Administration, West Building—4th Floor-Room W43–481, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR part 566 *Manufacturer Identification.*

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0043.

Affected Public: New manufacturers of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety standards.

Requested Expiration Date of Approval: April 30, 2017.

Form Number: None.

Abstract: If a motor vehicle or item of replacement motor vehicle equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal motor vehicle safety standard, the manufacturer is required under 49 U.S.C. 30118 to furnish notification of the defect or noncompliance to the Secretary of Transportation, as well as to owners, purchasers, and dealers of the motor vehicle or replacement equipment, and to remedy the defect or noncompliance without charge to the owner. To ensure that manufacturers are meeting these and other responsibilities under the statutes and regulations administered by NHTSA, the agency issued 49 CFR part 566, *Manufacturer Identification.* The

regulations in part 566 require manufacturers of motor vehicles or motor vehicle equipment, other than tires, to which a Federal motor vehicle safety standard (FMVSS) applies, to submit to NHTSA, on a one-time basis, identifying information on themselves and a description of the products that they manufacture to those standards.

The information that must be submitted includes: a) The full individual, partnership, or corporate name of the manufacturer; b) the residence address of the manufacturer and State of incorporation if applicable; and c) a description of each type of motor vehicle or of covered equipment manufactured by the manufacturer, including, for motor vehicles, the approximate ranges of gross vehicle weight ratings (GVWR) for each type. The regulations specify that the description may be of a general type, such as ''passenger cars'' or ''brake fluid,'' but that in the case of multipurpose passenger vehicles, trucks, and trailers, the description shall be specific enough to indicate the types of use for which the vehicles are intended, such as ''tank trailer,'' ''motor home,'' or ''cargo van.'' See 49 CFR 566.5(c)(1) and (2).

The regulations further specify that in the case of motor vehicles produced in two or more stages, if the manufacturer is an incomplete vehicle manufacturer, the description shall so state and include a description indicating the stage of completion of the vehicle and, where known, the types of use for which the vehicle is intended, such as ''Incomplete vehicle manufacturer—Chassis-cab intended for completion as a van-type truck.'' See 49 CFR 566.5(c)(3). The regulations also specify that if the manufacturer is an intermediate manufacturer, or a final stage manufacturer of a vehicle manufactured in two or more stages, the description shall so state and include a brief description of the work performed, such as ''Multipurpose passenger vehicles: Motor homes with GVWR from 8,000 to 12,000 pounds. Final-stage manufacturer—add body to bare chassis.'' Ibid.

The information must be submitted no later than 30 days after the manufacturer begins to manufacture motor vehicles or motor vehicle equipment subject to the FMVSS. No specific form need be used for the submission of this information. A suggested form that can be used to submit the required information is included on pages 35 and 36 of a handbook entitled *Requirements for Manufacturers of Motor Vehicles and Motor Vehicle Equipment* that can be accessed on the agency's Web site at *www.nhtsa.gov/cars/rules/maninfo.* A description of the reporting requirement is included on pages 8 and 9 of the handbook.

Manufacturers who have previously submitted identifying information must ensure that the information on file is accurate and complete by submitting revised information no later than 30 days after a change in the business that affects the validity of that information has occurred.

In 2010, NHTSA received submissions of manufacturer identifying information under 49 CFR part 566 from 487 manufacturers. In 2011, the agency received 585 such submissions. In 2012, the agency received 526. Based on this volume of submissions, the agency projects that it will receive approximately 533 part 566 submissions from manufacturers in each of the next three years. Assuming that it will take a manufacturer 15 minutes to prepare a letter containing the requested information or to complete the suggested form, the agency estimates that 133 hours will be expended on an annual basis by all manufacturers required to submit part 566 identifying information.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): The agency estimates that it will receive new submissions of manufacturer identifying information under part 566 from approximately 533 manufacturers of motor vehicles and regulated items of motor vehicle equipment per year. The manufacturers need only submit the required information on a one-time basis, with the proviso that they notify the agency of any changes in the information on file within 30 days from the date that any change in that information occurs.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information: 133 hours.

Estimate of the Total Annual Costs of the Collection of Information: Assuming that the letter or form that is used to submit part 566 information is completed by company officers or employees compensated at an average rate of $30.00 per hour, the agency estimates that $3,990 will be expended on an annual basis by all manufacturers required to submit that information.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: November 23, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–28874 Filed 12–2–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the three individuals identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on November 26, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose

sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On November 26, 2013, the Director of OFAC removed from the SDN List the three individuals listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

PORTILLO TOLENTINO, Rodolfo, c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Fernando De Borja #509, Chihuahua, Chihuahua 31240, Mexico; DOB 04 Nov 1945; POB Aquiles Serdan, Chihuahua, Mexico; nationality Mexico; citizen Mexico; R.F.C. POTR451104G26 (Mexico); C.U.R.P. POTR451104HCHRLD02 (Mexico) (individual) [SDNTK].

BARRIO REZA, Jorge Luis, c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Calle Septima No. 1401, Villa Juarez, Chihuahua, Chihuahua, Mexico; DOB 31 Oct 1954; POB Chihuahua, Chihuahua, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. BARJ541031HCHRZR06 (Mexico) (individual) [SDNTK].

CASTELLANOS CHACON, Christina Stetanel (a.k.a. ''CHRISTA CASTELLANOS''); DOB 17 Jun 1991; nationality Guatemala; Passport 133374328 (Guatemala) (individual) [SDNTK].

Dated: November 26, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–28885 Filed 12–2–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals and two entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the four individuals and two entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on November 26, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On November 26, 2013, the Director of OFAC removed from the SDN List the four individuals and two entities listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

BORRERO QUINTERO, Hector Fabio, c/o INVERSIONES SANTA LTDA., Cali, Colombia; c/o INMOBILIARIA SAMARIA LTDA., Cali, Colombia; c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; Carrera 21 No. 9E–48, Cali, Colombia; DOB 10 Feb 1948; Cedula No. 14945412 (Colombia) (individual) [SDNT].

GALLEGO CANO, Juan de la Cruz, c/o GAVIOTAS LTDA., Cartago, Valle, Colombia; Carrera 3 No. 6–39, El Aguila, Valle, Colombia; DOB 26 Feb 1956; POB El Aguila, Valle, Colombia; nationality Colombia; citizen Colombia; Cedula No. 6272570 (Colombia); Passport AF200504 (Colombia) (individual) [SDNT].

CARRION JIMENEZ, Jose Alonso, c/o BONOMERCAD S.A., Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; c/o DROCARD S.A., Bogota, Colombia; c/o FARMA 3.00 LIMITADA, Barranquilla, Colombia; c/o FOGENSA S.A., Bogota, Colombia; DOB 02 Aug 1958; Cedula No. 79000519 (Colombia); Passport 79000519 (Colombia) (individual) [SDNT].

MARMOLEJO LOAIZA, Carlos Julio, c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES AGRICOLAS AVICOLAS Y

GANADERAS LA CARMELITA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o COMERCIALIZADORA INTERNACIONAL VALLE DE ORO S.A., Cali, Colombia; DOB 03 May 1958; Cedula No. 16601783 (Colombia) (individual) [SDNT].

Entities

PROMOCIONES Y CONSTRUCCIONES DEL CARIBE LTDA., Calle 78 No. 53–70 Centro Comercial Villa Country, Barranquilla, Colombia; Calle 74 No. 53–30, Barranquilla, Colombia; Carrera 54 No. 72–147, Barranquilla, Colombia; Carrera 55 No. 72–109 Piso 1, Barranquilla, Colombia; Carrera 56 No. 70–60, Barranquilla, Colombia; Carrera 54 No. 72–80 Ejecutivo I, Barranquilla, Colombia; Carrera 57 No. 79–149, Barranquilla, Colombia; NIT # 890108115–3 (Colombia) [SDNT].

PROMOCIONES Y CONSTRUCCIONES DEL CARIBE LTDA. Y CIA. S.C.A. (a.k.a. PROMOCON), Calle 74 No. 53–30, Barranquilla, Colombia; Carrera 54 No. 72–80 L–21 Ejecutivo I, Barranquilla, Colombia; Calle 78 No. 53–70 Centro Comercial Villa Country, Barranquilla, Colombia; Carrera 55 No. 80–192, Barranquilla, Colombia; Carrera 55 No. 80–192 Ap. 6, Barranquilla, Colombia; Apartado Aereo 50183, Barranquilla, Colombia; Carrera 54 No. 72–147 L–115, Barranquilla, Colombia; Apartado Aereo 51110, Barranquilla, Colombia; NIT # 890108148–6 (Colombia) [SDNT].

Dated: November 26, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–28883 Filed 12–2–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Funds Availability for Grants for Transportation of Veterans in Highly Rural Areas; Extension of Application Deadline

AGENCY: Department of Veterans Affairs.

ACTION: Notice; extension of NOFA application deadline.

SUMMARY: This notice extends the Department of Veterans Affairs (VA) application deadline for funds available under the Grants for Transportation of Veterans in Highly Rural Areas program. VA published a Notice of Funds Availability (NOFA) in the **Federal Register** on July 9, 2013 (78 FR 41195) to announce the availability of funds for applications beginning June 9, 2013 through September 9, 2013, 4 p.m. eastern standard time. The NOFA includes eligibility and scoring criteria for grants to assist veterans in highly rural areas through innovative transportation services to travel to VA and non-VA facilities and otherwise assist in providing transportation services in connection with the provision of VA medical care. To allow applicants more time to complete the application process, VA is extending the application deadline to midnight eastern standard time on February 3, 2014.

DATES: Applications must be received in accordance with this NOFA no later than midnight eastern standard time on February 3, 2014.

Applications must be uploaded as a complete package into *www.grants.gov*. Applications may not be sent by fax.

FOR FURTHER INFORMATION CONTACT: Darren Wallace, National Coordinator, Highly Rural Transportation Grants, Veterans Transportation Program, Chief Business Office (10NB2G), 2957 Clairmont Road, Atlanta, GA 30329; (404) 828–5380. (This is not a toll-free number.)

For a copy of the Application Package: Download directly from *http://www.grants.gov/web/grants/home.html*. Click on search for grants and on the left side type in 64.035 in the box that says CFDA Number. Questions should be referred to the Veterans Transportation Program Office at (404) 828–5380 (this is not a toll-free number) or by email at *HRTG@va.gov*. For detailed program information and requirements, see the final rule published in the **Federal Register** on April 2, 2013 (78 FR 19586), which is codified at 38 CFR 17.700 through 17.730.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–28859 Filed 12–2–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 232 December 3, 2013

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Version 5 Critical Infrastructure Protection Reliability Standards; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–5–000]

Version 5 Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission approves the Version 5 Critical Infrastructure Protection Reliability Standards, CIP–002–5 through CIP–011–1, submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The CIP version 5 Standards address the cyber security of the bulk electric system and are an improvement over the current Commission-approved CIP Reliability Standards. The CIP version 5 Standards adopt new cyber security controls and extend the scope of the systems that are protected by the CIP Reliability Standards. The Commission also approves nineteen new or revised definitions associated with the CIP version 5 Standards for inclusion in the Glossary of Terms Used in NERC Reliability Standards. In addition, the Commission directs NERC to develop modifications to the CIP version 5 Standards and submit informational filings.

DATES: This rule will become effective February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Austin Rappeport (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 1800 Dual Highway, Suite 201, Hagerstown, MD 21740, Telephone: (301) 665–1393; Daniel Phillips (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6387; Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6840; Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8408.

SUPPLEMENTARY INFORMATION:

145 FERC ¶ 61,160

United States of America

Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Version 5 Critical Infrastructure Protection Reliability Standards

Docket No. RM13–5–000

Order No. 791

Final Rule

(Issued November 22, 2013)

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves the Version 5 Critical Infrastructure Protection (CIP) Reliability Standards, CIP–002–5 through CIP–011–1, submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). The CIP version 5 Standards address the cyber security of the bulk electric system and are an improvement over the current Commission-approved CIP Reliability Standards. The CIP version 5 Standards adopt new cyber security controls and extend the scope of the systems that are protected by the CIP Reliability Standards. The Commission also approves nineteen new or revised definitions associated with the CIP version 5 Standards for inclusion in the Glossary of Terms Used in NERC Reliability Standards (NERC Glossary).

2. The CIP version 5 Standards identify and categorize BES Cyber Systems using a new methodology based on whether a BES Cyber System has a Low, Medium, or High Impact on the reliable operation of the bulk electric system. At a minimum, a BES Cyber System must be categorized as a Low Impact asset. Once a BES Cyber System is categorized, a responsible entity must comply with the associated requirements of the CIP version 5 Standards that apply to the impact category. The CIP version 5 Standards also include 12 requirements with new cyber security controls, which address Electronic Security Perimeters (CIP–005–5), Systems Security Management (CIP–007–5), Incident Reporting and Response Planning (CIP–008–5), Recovery Plans for BES Cyber Systems (CIP–009–5), and Configuration Change Management and Vulnerability Assessments (CIP–010–1).

The CIP version 5 Standards are an improvement over the currently-approved CIP Reliability Standards. The Commission determines that categorizing BES Cyber Systems based on their Low, Medium, or High Impact on the reliable operation of the bulk electric system, with all BES Cyber Systems being categorized as at least Low Impact, offers more comprehensive protection of the bulk electric system. The Commission also finds that the new cyber security controls improve the security posture of responsible entities. Accordingly, the Commission approves the CIP version 5 Standards.

3. In addition to approving the CIP version 5 Standards, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to the CIP version 5 Standards. As discussed below, we also direct NERC to submit informational filings regarding certain issues during and following implementation of the CIP version 5 Standards.[2]

4. First, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to remove language found in 17 requirements in the CIP version 5 Standards that requires responsible entities to implement the requirements in a manner to ''identify, assess, and correct'' deficiencies.[3] We support NERC's move away from a ''zero tolerance'' approach to compliance, the development of strong internal controls by responsible entities, and NERC's development of standards that focus on the activities that have the greatest impact on Bulk-Power System reliability. However, the Commission is concerned that the proposed language is overly-vague, lacking basic definition and guidance that is needed, for example, to distinguish a successful internal control program from one that is inadequate. Alternatively, NERC may propose modifications that address the Commission concerns, discussed below, regarding the ambiguity and enforceability of the ''identify, assess, and correct'' language. The Commission directs NERC to submit a proposal for Commission approval within one year from the effective date of this Final Rule.[4]

5. Second, pursuant to section 215(d)(5) of the FPA, the Commission

[1] 16 U.S.C. 824o (2012).

[2] We note that the informational filings directed in this Final Rule are for informational purposes only and will not be noticed, nor require Commission action.

[3] *See* NERC Petition at 33.

[4] The proposed one year deadline would pertain only to addressing the ''identify, assess and correct'' language and the directive concerning communication networks, not to the other proposed modifications discussed below.

directs NERC to develop modifications that address security controls for Low Impact assets. As discussed below, the adoption of the Low Impact BES Cyber Asset category will expand the protections offered by the CIP version 5 Standards to additional assets that could cause cyber security risks to the bulk electric system. Specifically, categorizing BES Cyber Systems based on their Low, Medium, or High Impact on the reliable operation of the bulk electric system, with all BES Cyber Systems being categorized as at least Low Impact, offers more comprehensive protection of the bulk electric system. However, the CIP version 5 Standards do not require specific controls for Low Impact assets nor do they contain objective criteria from which to judge the sufficiency of the controls ultimately adopted by responsible entities for Low Impact assets. As discussed below, we direct that NERC develop modifications to the CIP version 5 Standards to address this concern. While NERC may address this concern by developing specific controls for Low Impact facilities, it has the flexibility to address it through other means, including those discussed below.

6. Third, we approve the definition of BES Cyber Asset. In addition, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop requirements that protect transient electronic devices (*e.g.,* thumb drives and laptop computers) that fall outside of the BES Cyber Asset definition.[5] While we are persuaded by NERC and others that it would be burdensome to include transient devices as BES Cyber Assets, we also believe that further protections are needed in light of the potential vulnerabilities associated with transient devices. Further, as discussed below, to better understand the scope and reach of the term BES Cyber Asset, we direct NERC to conduct a survey of responsible entities during the CIP version 5 Standards implementation periods to determine the number of assets, by type, that fall outside the definition of BES Cyber Asset because the assets do not satisfy the ''15-minute'' parameter.[6] The Commission directs NERC to submit an informational filing one year from the effective date of this Final Rule that assesses, based on the survey results, whether the BES Cyber Asset definition will, with the 15-minute parameter, cover the assets that are necessary to ensure the reliable operation of the Bulk-Power System.

7. Fourth, the Commission approves the definition of Cyber Asset. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to create a definition of communication networks and to develop new or modified Reliability Standards that address the protection of communication networks. The Commission also directs its staff to include the issue of protecting the nonprogrammable components of communications networks in the staff-led technical conference discussed herein.

8. The Commission approves 30 of the 32 Violation Risk Factors (VRF) proposed by NERC. However, the Commission directs NERC to modify the VRF assignment for Reliability Standard CIP–006–5, Requirement R3 from Lower to Medium and to modify the VRF assigned to Reliability Standard CIP–004–5, Requirement R4 from Lower to Medium. In addition, we direct NERC to modify eight of the Violation Severity Levels (VSLs) for the CIP version 5 Standards.

9. The Commission approves NERC's proposal to allow responsible entities to transition from compliance with the currently-effective CIP version 3 Standards to compliance with the CIP version 5 Standards. Thus, CIP–002–4 through CIP–009–4 will not become effective, and CIP–002–3 through CIP–009–3 will remain in effect until the effective date of the CIP version 5 Standards.[7] The Commission also approves the implementation plan and effective dates proposed by NERC.

I. Background

A. Section 215 of the FPA

10. Section 215 of the FPA requires the Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO, subject to Commission oversight, or by the Commission independently.[8] Pursuant to the requirements of FPA section 215, the Commission established a process to select and certify an ERO.[9] The Commission subsequently certified NERC as the ERO.[10]

B. Order Nos. 706 and 761

1. Order No. 706

11. On January 18, 2008, the Commission issued Order No. 706, which approved the CIP version 1 Standards to address cyber security of the Bulk-Power System.[11] In Order No. 706, the Commission approved eight CIP Reliability Standards (CIP–002–1 through CIP–009–1). While approving the CIP version 1 Standards, the Commission also directed NERC to develop modifications to them to enhance the protection provided by the CIP Reliability Standards. Subsequently, NERC filed the CIP version 2 and CIP version 3 Standards in partial compliance with Order No. 706. The Commission approved these Reliability Standards in September 2009[12] and March 2010,[13] respectively.

2. Order No. 761

12. On April 19, 2012, the Commission issued Order No. 761, which approved the CIP version 4 Standards (CIP–002–4 through CIP–009–4).[14] Reliability Standard CIP–002–4 (Critical Cyber Asset Identification) sets forth 17 uniform ''bright line'' criteria for identifying Critical Assets. The Commission also accepted NERC's proposed implementation schedule for the CIP version 4 Standards, which are currently scheduled to be fully implemented and enforceable beginning October 2014.[15]

[5] As discussed below, NERC's definition of BES Cyber Asset provides that a ''Cyber Asset is not a BES Cyber Asset if, for 30 consecutive calendar days or less, it is directly connected to a network within an [Electronic Security Perimeter], a Cyber Asset within an [Electronic Security Perimeter], or to a BES Cyber Asset, and it is used for data transfer, vulnerability assessment, maintenance, or troubleshooting purposes.''

[6] NERC's BES Cyber Asset definition only includes Cyber Assets that ''if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment. . . .''

[7] On August 12, 2013, the Commission granted an extension of time to implement the CIP version 4 Standards from April 1, 2014 to October 1, 2014. *N. Am. Elec. Reliability Corp.,* 144 FERC ¶ 61,123 (2013).

[8] 16 U.S.C. 824o(e)(3) (2012).

[9] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[10] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc. v. FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[11] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 122 FERC ¶ 61,040, *order on reh'g,* Order No. 706–A, 123 FERC ¶ 61,174 (2008), *order on clarification,* Order No. 706–B, 126 FERC ¶ 61,229 (2009), *order on clarification,* Order No. 706–C, 127 FERC ¶ 61,273 (2009).

[12] *N. Am. Elec. Reliability Corp.,* 128 FERC ¶ 61,291, *order denying reh'g and granting clarification,* 129 FERC ¶ 61,236 (2009).

[13] *N. Am. Elec. Reliability Corp.,* 130 FERC ¶ 61,271 (2010).

[14] *Version 4 Critical Infrastructure Protection Reliability Standards,* Order No. 761, 77 Fed. Reg. 24,594 (Apr. 25, 2012), 139 FERC ¶ 61,058 (2012), *order denying reh'g,* 140 FERC ¶ 61,109 (2012).

[15] As noted above, the Commission extended the compliance deadline for the CIP version 4

Continued

C. NERC Petition and CIP Version 5 Standards

1. NERC Petition and Errata

13. In its January 31, 2013 petition, NERC seeks Commission approval of the CIP version 5 Standards, nineteen new or revised NERC Glossary terms, VRF and VSL assignments, and an implementation plan.[16] NERC maintains that the CIP version 5 Standards are just and reasonable, as they meet or exceed each of the guidelines that the Commission identified in Order No. 672 for evaluating a proposed Reliability Standard.[17] NERC asserts that the CIP version 5 Standards ''serve the important reliability goal of providing a cybersecurity framework for the identification and protection of BES Cyber Systems . . . to support the reliable operation of the Bulk Power System.'' [18] In addition, NERC states that the CIP version 5 Standards are ''designed to be clear and unambiguous'' and the Commission should approve the CIP version 5 Standards as ''clearly enforceable.'' [19]

14. Further, NERC maintains that the CIP version 5 Standards represent a significant improvement to the currently-approved CIP Reliability Standards, as the CIP version 5 Standards require responsible entities to use a new approach to categorize all cyber systems impacting the bulk electric system as having a Low, Medium, or High Impact.[20] NERC states that the new approach to classifying cyber systems ''moves away from the CIP version 4 'bright-line' approach of only identifying Critical Assets (and applying CIP requirements only to their associated Critical Cyber Assets), to requiring a minimum classification of 'Low Impact' for all BES Cyber Systems.'' [21] NERC states that the adoption of the Low-Medium-High Impact categorization ''resulted from a review of the National Institute of Standards and Technology (NIST) Risk Management Framework for categorizing and applying security controls, a review that was directed by the Commission in Order No. 706.'' [22]

15. NERC also notes the adoption of new language within several of the CIP version 5 Standards in which the standard drafting team incorporated ''a requirement that Responsible Entities implement cyber policies in a manner to 'identify, assess, and correct' deficiencies.'' [23] NERC states that the ''identify, assess, and correct'' language is ''[c]onsistent with the NIST Risk Management Framework and the Commission's guidance in prior orders,'' asserting that the ''implementation of certain CIP version 5 requirements in a manner to 'identify, assess, and correct' deficiencies emulates the *FERC Policy Statement on Penalty Guidelines.''* [24] NERC further states that the ''identify, assess, and correct'' language ''is included as a performance expectation in the requirements, not as an enforcement component.'' [25]

16. NERC asserts that the CIP version 5 Standards address ''all applicable directives in Order No. 706'' while ''eliminating unnecessary documentation requirements to allow entities to focus on the reliability and security of the Bulk Power System.'' [26] Accordingly, NERC requests that the Commission approve the CIP version 5 Standards, the new and revised definitions, the associated VRF and VSL assignments, and the implementation plan. NERC requests that the CIP version 5 Standards become effective on ''the first day of the eighth calendar quarter after a Final Rule is issued in this docket.'' [27]

17. NERC requests prompt Commission action approving the CIP version 5 Standards and associated implementation plan.[28] With regard to the implementation plan, NERC states that the proposed language ''would allow entities to transition from CIP Version 3 to CIP Version 5, thereby bypassing implementation of CIP Version 4 completely upon Commission approval.'' [29] NERC asserts that prompt approval of the CIP version 5 Standards and implementation plan ''would reduce uncertainty among Responsible Entities regarding implementation of the CIP standards.'' [30]

18. On September 30, 2013, NERC filed an errata with corrections to the VSLs for the CIP version 5 Standards and revisions to the definitions of Electronic Access Control or Monitoring Systems and Interactive Remote Access in which the term ''Intermediate Devices'' is replaced with the term ''Intermediate Systems.'' On October 1, 2013, NERC filed a supplemental errata to correct a formatting error in the September 30 errata.

2. CIP Version 5 Standards and NERC Explanation of Provisions

19. The CIP version 5 Standards include ten new or modified Reliability Standards.

20. CIP–002–5—Cyber Security—BES Cyber System Categorization: CIP–002–5 is the first step in identifying BES Cyber Systems, which are assets which must be protected by the cyber security standards. If a responsible entity does not identify any BES Cyber Systems, it does not have compliance responsibility under the rest of the proposed CIP Standards. However, a responsible entity that identifies BES Cyber Systems must comply with CIP–003–5 to CIP–011–1, according to specific criteria that characterize the impact of the identified BES Cyber Systems.

21. In particular, CIP–002–5 adds two new terms to the NERC Glossary that define the assets subject to CIP protections. First, NERC defines a BES Cyber Asset as ''[a] Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System.'' [31] Second, NERC defines a BES Cyber System as ''[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.'' [32]

22. NERC states that Reliability Standard CIP–002–5 will require the identification and categorization of BES Cyber Systems according to specific criteria that characterize their impact for the application of cyber security requirements commensurate with the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the bulk electric system.[33]

23. NERC states that CIP–002–5 ''Attachment 1—Impact Rating Criteria'' identifies three categories of BES Cyber Systems. The High Impact category

Standards in Order No. 761 from April 2014 to October 2014.

[16] Reliability Standards CIP–002–5 through CIP–011–1 are not attached to this Final Rule. The complete text of CIP version 5 Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM13–5–000 and is posted on the ERO's Web site, *available at http://www.nerc.com.*

[17] *See* NERC Petition at 8 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 320–337). *See also* NERC Petition, Exh. G (Order No. 672 Criteria for Approving Proposed Reliability Standards).

[18] *Id.* at 10.

[19] *Id.* at 27.

[20] *See id.* at 15.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 33.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 5.

[27] *Id.* at 2.

[28] *Id.* at 5.

[29] *Id.* at 4.

[30] *Id.* at 5.

[31] *Id.* at 14.

[32] *Id.*

[33] *Id.* at 11.

covers large control centers, similar to those control centers identified as Critical Assets in CIP–002–4. The Medium Impact category covers generation and transmission facilities, similar to those identified as Critical Assets in CIP–002–4, along with other control centers not identified as Critical Assets in CIP–002–4. The Low Impact category covers all other BES Cyber Systems. NERC states that the Low Impact category provides protections for systems not included in the CIP version 4 Standards.[34]

24. Once a responsible entity identifies a BES Cyber System under CIP–002–5, the entity must comply with the controls included in Reliability Standards CIP–003–5 to CIP–011–1 corresponding to its impact category.[35]

25. CIP–003–5—Cyber Security—Security Management Controls: NERC states that Reliability Standard CIP–003–5 will require approval by a CIP Senior Manager of the documented cyber security policies related to CIP–004–5 through CIP–009–5, CIP–010–1, and CIP–011–1. Reliability Standard CIP–003–5, Requirement R2, will require implementation of policies related to cyber security awareness, physical security controls, electronic access controls, and incident response to a Cyber Security Incident for those assets that have Low Impact BES Cyber Systems under CIP–002–5's categorization process. According to NERC, a requirement that a Cyber Security Policy be ''readily available'' was deleted because of general confusion around that term and because training requirements in CIP–004–5 provide for knowledge of reliability policies. NERC states that it moved several provisions of requirements related to information protection in previous CIP versions to CIP–011–1 and, therefore, deleted the requirements from CIP–003–5.[36]

26. CIP–004–5—Cyber Security—Personnel and Training: NERC states that Reliability Standard CIP–004–5 will require documented processes or programs for security awareness, cyber security training, personnel risk assessment, and access management. Requirement R2 of CIP–004–5 adds specific training roles for visitor control programs, electronic interconnectivity supporting the operation and control of BES Cyber Systems, and storage media as part of the treatment of BES Cyber System Information. NERC states that the drafting team modified the requirements pertaining to personnel risk assessments and access management in response to lessons learned from implementing previous versions. Reliability Standard CIP–004–5, Requirement R3, now specifies that the seven year criminal history check covers all locations where the individual has resided for six consecutive months or more without specifying school, work, etc., and regardless of official residence. Reliability Standard CIP–004–5, Requirement R4 now combines the access management requirements from CIP–003–4, CIP–004–4, CIP–006–4, and CIP–007–4 into a single requirement. These requirements from the CIP version 4 Standards, as incorporated in Requirement R4, remain largely unchanged except to clarify certain terminology. NERC states that combining these requirements improves consistency in the authorization and review process. Reliability Standard CIP–004–5 modifies Requirement R4 by removing the obligation to maintain a list of authorized personnel. NERC explains that the removal is appropriate because the list represents only one form of evidence to demonstrate compliance that only authorized persons have access. Requirement R5 requires a registered entity to revoke a terminated employee's access concurrent with his or her termination, to be completed within 24 hours.[37]

27. CIP–005–5—Cyber Security—Electronic Security Perimeter(s): NERC states that Reliability Standard CIP–005–5, Requirement R1, focuses on the discrete Electronic Access Points rather than the logical ''perimeter,'' which is the focus of currently-effective CIP–005–3. Requirement R1.2 of the currently-effective CIP–005–3 has been deleted from the CIP version 5 Standards. NERC explains that Requirement R1.2 is definitional and was used to bring dial-up modems using non-routable protocols into the scope of previous versions of CIP–005. According to NERC, the non-routable blanket exemption included in the CIP version 1 through version 4 Standards was removed from CIP–002–5.

28. CIP–006–5—Cyber Security—Physical Security of BES Cyber Systems: NERC states that Reliability Standard CIP–006–5 is intended to manage physical access to BES Cyber Systems by specifying a physical security plan to protect BES Cyber Systems against compromise that could lead to misoperation or instability. Reliability Standard CIP–006–5 reflects the retirement of Requirements R8.2 and R8.3 of Commission-approved CIP–006–4, concerning the retention of testing records. According to NERC, the retention period is now specified in the compliance section of Reliability Standard CIP–006–5.[38]

29. CIP–007–5—Cyber Security—Systems Security Management: NERC states that Reliability Standard CIP–007–5 addresses system security by specifying technical, operational, and procedural requirements in support of protecting BES Cyber Systems against compromise that could lead to misoperation or instability of the bulk electric system. NERC states that it modified CIP–007–5 to conform to the formatting approach of the CIP version 5 Standards, along with changes to address several Commission directives and to make the requirements less dependent on specific technology so that they will remain relevant for future, yet-unknown developing technologies. For example, according to NERC, Requirement R3 is a competency-based requirement, i.e., the responsible entity must document how it addresses the malware risk for each BES Cyber System, but the requirement does not prescribe a particular technical method in order to account for potential technological advancement.[39]

30. CIP–008–5—Cyber Security—Incident Reporting and Response Planning: NERC states that Reliability Standard CIP–008–5 mitigates the risk to the reliable operation of the bulk electric system resulting from a Cyber Security Incident by specifying incident response requirements. Proposed Requirement R1 requires responsible entities to report Cyber Security Incidents within 1 hour of recognition. Requirement R2 requires testing to verify response plan effectiveness and consistent application in responding to a Cyber Security Incident. Requirement R3 provides for an after-action review for tests or actual incidents, and requires an update to the Cyber Security Incident response plan based on those lessons learned. Requirement R3 also establishes a single timeline for a responsible entity to determine the lessons learned and update recovery plans. Specifically, where previous CIP versions specified ''30 calendar days'' for determining the lessons learned, followed by additional time for updating recovery plans and notification, proposed Requirement R3 combines those activities into a single 90-day timeframe.[40]

31. CIP–009–5—Cyber Security—Recovery Plans for BES Cyber Systems:

[34] *Id.*

[35] *Id.*

[36] *Id.* at 11–12.

[37] *Id.* at 12.

[38] *Id.*

[39] *Id.* at 12–13.

[40] *Id.* at 13.

NERC explains that Reliability Standard CIP–009–5 provides for the recovery of the reliability functions performed by BES Cyber Systems by specifying a recovery plan to support the continued stability, operability, and reliability of the bulk electric system. Requirement R1 includes controls to protect data that would be useful in the investigation of an event that results in the execution of a Cyber System recovery plan. NERC explains that Requirement R2 includes operational testing to support the recovery of BES Cyber Systems. Requirement R3 establishes a single timeline for a responsible entity to determine the lessons learned and update recovery plans, similar to CIP–008–5.[41]

32. CIP–010–1—Cyber Security—Configuration Change Management and Vulnerability Assessments: NERC states that Reliability Standard CIP–010–1 is a new Reliability Standard consolidating the configuration change management and vulnerability assessment-related requirements from previous versions of CIP–003, CIP–005 and CIP–007. Requirement R1 specifies the configuration change management requirements. Requirement R2 establishes the configuration monitoring requirements intended to detect unauthorized modifications to BES Cyber Systems. NERC explains that Requirement R3 establishes the vulnerability assessment requirements intended to ensure proper implementation of cyber security controls while promoting continuous improvement of a responsible entity's cyber security posture.[42]

33. CIP–011–1—Cyber Security—Information Protection: NERC states that Reliability Standard CIP–011–1 is a new Reliability Standard consolidating the information protection requirements from previous versions of CIP–003 and CIP–007. Requirement R1 specifies information protection controls to prevent unauthorized access to BES Cyber System Information. Requirement R2 specifies reuse and disposal provisions to prevent unauthorized dissemination of protected information.[43]

D. Notice of Proposed Rulemaking

34. On April 18, 2013, the Commission issued a Notice of Proposed Rulemaking proposing to approve the CIP version 5 Standards, CIP–002–5 through CIP–011–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[44] The NOPR stated that the CIP version 5 Standards adopt new cyber security controls that are intended to safeguard physical and electronic access to BES Cyber Systems. Further, the NOPR stated that NERC proposes a new approach to identifying and classifying BES Cyber Systems that will require at least a minimum classification of Low Impact for all BES Cyber Systems. The NOPR also proposed to approve the nineteen new or revised definitions associated with the CIP version 5 Standards for inclusion in the NERC Glossary.

35. While proposing to approve the CIP version 5 Standards, the Commission also identified issues with the CIP version 5 Standards. The Commission stated in the NOPR that NERC's proposal to include language that requires entities to ''identify, assess, and correct'' deficiencies is unclear with respect to the implementation and compliance obligations that language imposes and that it is too vague to audit and enforce compliance. The NOPR sought comment on the ''identify, assess, and correct'' language and stated that, depending on the comments, the Commission may direct NERC to develop modifications or remove the ''identify, assess, and correct'' language. In addition, the NOPR proposed to direct NERC to modify Reliability Standard CIP–003–5, Requirement R2, to require responsible entities to adopt specific, technically-supported cyber security controls for Low Impact BES Cyber Assets. The NOPR sought comment on these proposals.

36. The NOPR identified issues with the proposed definitions of BES Cyber Asset, Control Center, and Cyber Asset and use of the terms Reliability Tasks and Intermediate Devices in the proposed definitions. In addition, the NOPR identified technical issues involving improvements to the CIP version 5 Standards, including remote access, communications security, and the NIST Risk Management Framework. The NOPR stated that, depending on the comments received, the Commission may direct NERC to develop modifications to certain definitions to eliminate ambiguities and ensure that BES Cyber Assets are adequately protected. The NOPR sought comment on these proposals.

37. In the NOPR, the Commission proposed to approve 30 of the 32 VRFs. In addition, the Commission proposed to direct NERC to modify the VSLs for the CIP version 5 Standards.

38. The Commission proposed in the NOPR to approve NERC's proposal to allow responsible entities to transition from compliance with the currently-effective CIP version 3 Standards to compliance with the CIP version 5 Standards, essentially retiring the CIP version 4 Standards prior to mandatory compliance. The NOPR also sought comment on whether the 24-month and 36-month implementation periods proposed by NERC for the CIP version 5 Standards are necessary, and what activities are required to effect the transition during the proposed implementation periods.

39. In response to the NOPR, interested entities filed 62 comments. The comments have assisted us in better understanding the issues and developing this Final Rule. We address below the issues raised in the NOPR and comments. The Appendix to this Final Rule lists the entities that filed comments on the NOPR.

E. NERC Informational Filing

40. On October 11, 2013, NERC submitted an informational filing detailing a pilot program to be conducted during the transition from the CIP version 3 Standards to the CIP version 5 Standards. NERC explains that the implementation study is part of a larger program that includes the development of guidance, outreach to industry, and training for all responsible entities throughout the implementation period.[45] NERC states that the goals of the implementation study include: (1) Improving industry's understanding of the technical security challenges that need to be addressed in order to comply with the CIP version 5 Standards; (2) providing industry with a clear approach to transition from the CIP version 3 Standards to the CIP version 5 Standards, including compliance and enforcement expectations; and (3) providing industry with the knowledge to understand the technical and compliance-related resources needed to transition to, and manage compliance with, the CIP version 5 Standards.[46] NERC explains further that the study participants will consist of seven representative responsible entities with a proven record of success in compliance with the CIP version 3 Standards.[47] NERC states that based on participation in the implementation study, future compliance with the CIP version 3 Standards will be waived for

[41] *Id.*

[42] *Id.*

[43] *Id.* at 13–14.

[44] *Version 5 Critical Infrastructure Protection Reliability Standards,* 78 FR 24,107 (Apr. 24, 2013), 143 FERC ¶ 61,055 (2013) (NOPRA).

[45] NERC Informational Filing at 7.

[46] *Id.* at 7–8.

[47] *Id.* at 8.

these seven responsible entities.[48] Finally, NERC concludes that following the conclusion of the implementation study in April 2014, NERC and the Regional Entities will prepare and publish a report that identifies the lessons learned and recommendations for the transition to the CIP version 5 Standards resulting from the implementation study.[49]

II. Discussion

41. Pursuant to section 215(d) of the FPA, the Commission approves the CIP version 5 Standards, CIP–002–5 through CIP–011–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We find that the CIP version 5 Standards represent an improvement over the currently-approved CIP Reliability Standards. In particular, we find that the categorization of assets under CIP–002–5 based on their Low, Medium, or High Impact on the reliable operation of the bulk electric system, with all BES Cyber Systems being categorized as at least Low Impact, offers more comprehensive protection of the bulk electric system. In addition, the CIP version 5 Standards incorporate several new cyber security controls that will improve the overall security posture of the responsible entities. Further, we approve nineteen new or revised definitions associated with the CIP version 5 Standards for inclusion in the NERC Glossary. We approve the implementation plan and, with modifications, VRFs and VSLs proposed by NERC.

42. As discussed below, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to the CIP version 5 Standards to address our concerns regarding: (1) The ''identify, assess, and correct'' language; (2) protections for Low Impact BES Cyber Systems; (3) the risks posed by transient devices; and (4) the protection of communication networks. Further, we direct that NERC survey responsible entities during the CIP version 5 Standards implementation periods to gain a better understanding of the BES Cyber Asset definition. In addition, the Commission directs staff to convene a staff-led technical conference, within 180 days from the date of this Final Rule, addressing the technical issues identified in the NOPR concerning communications security, remote access, and the NIST Risk Management Framework.

43. Below we discuss the following matters: (A) The ''identify, assess, and correct'' language; (B) BES Cyber Asset categorization; (C) new and revised NERC Glossary definitions; (D) implementation plan; (E) VRF and VSL assignments; and (F) other technical issues.

A. ''Identify, Assess, and Correct'' Language

NERC Petition

44. The CIP version 5 Standards incorporate ''a requirement that Responsible Entities implement cyber policies in a manner to 'identify, assess, and correct' deficiencies'' in 17 CIP requirements.[50] NERC states that the ''identify, assess, and correct'' language is ''[c]onsistent with the NIST Risk Management Framework and the Commission's guidance in prior orders,'' asserting that the ''implementation of certain CIP version 5 requirements in a manner to 'identify, assess, and correct' deficiencies emulates the *FERC Policy Statement on Penalty Guidelines*.'' [51]

NOPR

45. In the NOPR, the Commission stated that NERC has not explained the proposed ''identify, assess, and correct'' language sufficiently. The NOPR expressed concern that this language is unclear as to the implementation and compliance obligations it places on responsible entities and is too vague to audit and enforce compliance. The NOPR sought comment on the meaning of this language and on how it will be implemented and enforced. The NOPR stated that, depending on the explanations provided in the comments, the Commission may direct NERC to develop modifications, including directing NERC to clarify both the implementation and compliance obligations created by this language and the criteria by which auditors will be able to determine compliance, or the Commission may direct NERC to remove this language if it results in requirements that degrade the protections afforded by the CIP version 5 Standards and are difficult to implement and enforce.

46. The NOPR questioned whether the ''identify, assess, and correct'' language imposes one obligation on a responsible entity (i.e., to ensure the entity has a process in place to ''identify, assess, and correct'' a violation or, alternatively, to ensure that the underlying substantive requirement is not violated) or two obligations (i.e., to (1) ensure the entity has a process in place to ''identify, assess, and correct'' a violation and (2) to ensure that the underlying substantive requirement is not violated). The NOPR stated that the proposed ''identify, assess, and correct'' language is ambiguous enough to support both interpretations. The NOPR expressed concern that, under either interpretation, the ''identify, assess, and correct'' language is too vague to be audited, and that NERC has not explained what is expected of responsible entities or the intended meaning of the individual terms ''identify,'' ''assess,'' ''correct,'' and ''deficiencies'' as they are used in the CIP version 5 Standards.

47. With respect to the term ''identify,'' the NOPR observed that it is not clear whether a responsible entity is expected to take steps to recognize past deficiencies, ongoing deficiencies, or deficiencies that are likely to or may occur in the future. With respect to the term ''assess,'' the NOPR stated that NERC does not explain the scope of activities that are implied in the term ''assess,'' which could range from a cursory review of an isolated ''deficiency'' to a detailed root-cause analysis. With respect to the term ''correct,'' the NOPR explained that NERC did not define what it means for a responsible entity to ''correct'' a deficiency. The NOPR stated that this term may include ending a deficiency, taking measures to address the effect of a deficiency, or taking steps to prevent a deficiency from recurring. With respect to the term ''deficiency,'' the NOPR noted that NERC does not explain, nor does the text of the CIP version 5 Standards define, the term. The Commission observed that it is not clear whether ''deficiencies'' means ''possible violations,'' as defined in NERC's Compliance Monitoring and Enforcement Program, or extends to a broader category of matters. The NOPR sought comment on these concerns and on any modification that may be necessary to address them.

48. The NOPR stated that the petition does not identify a reasonable timeframe for identifying, assessing and correcting deficiencies. Without identifying a timeframe, the NOPR explained that it is conceivable that, as long as the responsible entity identifies, assesses and corrects a deficiency before, or perhaps even when, NERC, the Regional Entities or the Commission discover the deficiency, there is no possible violation of the CIP Reliability Standards, regardless of the seriousness of the deficiency, the duration of the deficiency, or the length of time between the identification and correction of the deficiency. The NOPR sought comment on this concern and on

[48] *Id.* at 12–13.

[49] *Id.* at 3.

[50] NERC Petition at 33.

[51] *Id.*

any modifications that may be necessary to address it.

49. The NOPR stated that the proposed ''identify, assess, and correct'' language allows a responsible entity to avoid audit risk. The NOPR explained that, without a required timeframe for identifying, assessing and correcting a deficiency, a responsible entity could defer its required assessment of its CIP compliance program until just prior to a scheduled audit or self-certification. The NOPR stated that NERC does not explain whether a responsible entity is required to disclose the identified deficiencies in such cases, and it is not clear whether the audit team can identify a potential violation if the responsible entity identifies the deficiency and is in the process of assessing and correcting it, even if the deficiency is identified long after it came into existence. The NOPR observed that it is also not clear how prior deficiencies that are identified, assessed and corrected are treated in assessing a responsible entity's compliance history. The NOPR sought comment on these concerns and on any modifications that may be necessary to address them.

50. The NOPR stated that the petition does not explain how NERC will treat multiple corrections of deficiencies concerning the same requirement, or the quality of the mitigation. The NOPR explained that it is unclear whether previous corrections will be reported or otherwise made known to NERC because they are not considered potential violations of the CIP Reliability Standard. The NOPR sought comment on this concern and on any modifications that may be necessary to address it.

51. In the NOPR, the Commission questioned how performance of the ''identify, assess, and correct'' language can be uniform or consistent among responsible entities absent clarification of Regional Entity and NERC compliance techniques.

52. The NOPR stated that neither the CIP version 5 Standards nor NERC's petition explain what is expected of responsible entities under the proposed ''identify, assess, and correct'' language. The NOPR expressed concern that including the assess and monitor processes in the language of a requirement, as proposed by NERC, could render such requirements unenforceable. The NOPR sought comment on this concern and on any modifications that may be necessary to address them.

Comments

53. NERC comments that the Commission should approve the ''identify, assess, and correct'' language without modification. NERC explains that the ''identify, assess, and correct'' language is meant to address ''frequently occurring security obligations (High Frequency Security Obligations) that present a lesser risk to reliability that reduces the administrative burden of the compliance process.'' [52] According to NERC, the intent of the ''identify, assess, and correct'' language is not to eliminate accountability for responsible entities or hinder Regional Entity, NERC or Commission oversight. NERC states that, if the ''identify, assess, and correct'' language is approved, it will submit a compliance filing by June 1, 2014 or six months from the date of the final rule in this docket, whichever is later, that ''further outlines the compliance and enforcement aspects of this language, including when entities are expected to self-report or maintain documentation of its self-correcting process for audit, what constitutes potential noncompliance, and the necessary guidance for auditors.'' [53]

54. NERC explains that the standard drafting team set out ''to minimize the compliance burdens associated with High Frequency Security Obligations.'' [54] NERC contends that modifying or removing the ''identify, assess, and correct'' language through the NERC standard development process could delay implementation of the CIP version 5 Standards because the standard drafting team will have to consider alternative approaches. If the Commission directs removal or modifications to the ''identify, assess, and correct'' language, NERC states that the Commission should allow a reasonable time to develop changes through NERC's standard development process.

55. According to NERC, the ''identify, assess, and correct'' language is ''intended to prescribe the manner in which entities must implement their policies and procedures for specific areas of security protection.'' [55] NERC claims that the best approach to address High Frequency Security Obligations is to ''focus entities on correcting identified deficiencies in [the] implementation of the Technical Parts of the proposed requirements to promote continuous awareness in an entity's cyber security program.'' [56]

56. NERC distinguishes requirements containing the ''identify, assess, and correct language'' from other requirements. For requirements lacking the ''identify, assess, and correct'' language, NERC explains that responsible entities are ''obligated to: (1) Have the documented processes stated in the requirement, and (2) implement the documented processes to achieve the Technical Parts.'' [57] NERC comments that ''[h]ow the entity chooses to implement the process would be documented for the Compliance Enforcement Authority, as required by the associated Measure . . . [f]or these requirements, the entity either has the process in place and the process achieves the Technical Parts or the entity does not have a process in place and/or its process does not achieve the Technical Parts.'' [58]

57. For requirements including the ''identify, assess, and correct'' language, NERC states that the '' 'identify, assess, and correct language' . . . mandates that the entity use a self-correcting process in its implementation of its documented policies to achieve the Technical Parts.'' NERC opines that the ''self-correcting language does not affect the underlying obligation in the requirement to achieve the Technical Parts.'' [59] According to NERC, the only difference is that the ''identify, assess, and correct'' language ''set[s] additional parameters for the manner in which an entity should implement the process.'' [60] NERC states, therefore, that the CIP version 5 Standards impose two obligations upon responsible entities. According to NERC, the CIP version 5 Standards that require a documented process, regardless of whether such requirement includes the ''identify, assess and correct'' language, contain two obligations. The first requirement is to have the process mandated by the Reliability Standards and the second is the implementation of that process.

58. NERC contends that specifying a uniform definition of 'identify,' 'assess,' and 'correct' is impracticable given the wide range of systems and the number of assets that make up an entity's systems. NERC explains that the standard drafting team did not create specific definitions ''because responsible entities are in the best position to define their own internal compliance processes based on the

[52] NERC Comments at 5.

[53] *Id.* at 14.

[54] *Id.* at 7.

[55] *Id.* at 8.

[56] *Id.*

[57] *Id.* at 9.

[58] *Id.*

[59] *Id.*

[60] *Id.* at 9–10.

particular characteristics and make-up of their systems, including whether they will use internal controls or a different type of compliance management process to meet their specific system design.'' [61] According to NERC, if actual experience shows that an entity's compliance program does not meet compliance expectations, the ''identify, assess, and correct'' language mandates that the entity's processes and implementation be modified to correct any deficiencies. In addition, NERC states that, depending on the circumstances, ''there may be a potential violation if actual performance does not meet the Technical Parts.'' [62]

59. NERC contends that the ''identify, assess, and correct'' language does not remove accountability for responsible entities, nor does it eliminate Regional Entity, NERC, and Commission oversight. NERC claims that, by requiring responsible entities to demonstrate how their ''identify, assess, and correct'' process works, auditors will better understand a responsible entity's compliance program. NERC states that it is committed to developing Reliability Standard Audit Worksheets (RSAWs) and other guidance to support the adoption of the ''identify, assess, and correct'' language.

60. According to NERC, the term ''deficiencies,'' as used in the sample RSAW, ''referred to potential noncompliance with the proposed CIP Version 5 requirement; however not all deficiencies would be treated as possible violations depending on the specific facts and circumstances surrounding a deficiency.'' [63] NERC explains that a responsible entity would be expected to document the identification, assessment, and correction of lesser risk deficiencies for review by the Compliance Enforcement Authority, but that responsible entities would still be expected to self-report higher risk deficiencies. NERC comments that not requiring the individual reporting of lesser risk deficiencies will result in resource savings and allow entities to focus on security as opposed to the administrative aspects of the compliance process.

61. Regarding the timelines governing the ''identify, assess, and correct'' process, NERC states that ''an entity's own internal processes would dictate the timing aspect.'' [64] NERC explains that a responsible entity would be required to explain the timing of its process as part of an audit, and timing would be one factor in the auditors review of the entity's ''identify, assess, and correct'' process. Comparing the ''identify, assess, and correct'' language to the NIST Risk Management Framework, NERC opines that ''requiring entities to continuously demonstrate that they are implementing processes in a manner that identifies, assesses, and corrects, is similar to the monitoring steps of the NIST Framework.'' [65]

62. Numerous commenters support the ''identify, assess, and correct'' language and do not indicate that there is a need for clarification.[66] These commenters assert that the ''identify, assess, and correct'' language is an improvement over the ''zero tolerance'' compliance approach in prior versions of the CIP Reliability Standards. The commenters also note that the ''identify, assess, and correct'' language was only added to requirements addressing lower risks to the reliability of the Bulk-Power System. For example, NextEra comments that ''identify, assess, and correct'' language is only found in requirements that ''involve management of high volumes of information or data and those that involve execution of regular, periodic tasks. These are areas where scale matters; where, for example, one mistake out of thousands of non-mistakes does not necessarily warrant the time and attention that must, by law, be given to 'potential violations' of a NERC reliability standard approved under Section 215 of the FPA.'' [67]

63. Commenters, including LADWP and Tacoma Power, claim that the ''identify, assess, and correct'' language is clear and creates incentives for responsible entities to improve internal controls to discover, evaluate, and address deficiencies.[68] The commenters assert that the ''identify, assess, and correct'' language could result in improved, more cost-effective reliability. The commenters generally disagree with the NOPR's concerns regarding the ''identify, assess, and correct'' language. For example, in response to the NOPR's concerns regarding timelines for completing ''identify, assess, and correct'' activities, MidAmerican states that ''[a]ny time constraint on entities' remediation of discovered deficiencies would introduce another layer of required monitoring in areas where the industry has determined that ministerial compliance tasks are already unduly burdensome and counter-productive to the need to focus entities' limited resources on the most critical risks.'' [69]

64. Many commenters support retaining the ''identify, assess, and correct'' language in the requirements, but acknowledge the need for greater clarity as to how the ''identify, assess, and correct'' language will work in practice.[70] EEI and other commenters support NERC's proposal to submit a compliance filing that provides more detail regarding the ''identify, assess, and correct'' language. BPA, ISO New England and other commenters support allowing NERC to clarify the ''identify, assess, and correct'' language in a separate document in order not to delay implementation of the beneficial technical requirements in the CIP version 5 Standards.

65. Some commenters support modifying or removing the ''identify, assess, and correct'' language.[71] These commenters question whether the ''identify, assess, and correct'' language is auditable and enforceable due to a lack of clarity. While SPP RE comments that the ''zero-defect'' compliance aspect of the CIP Version 3 Reliability Standards is problematic, SPP RE also believes that the ''identify, assess, and correct'' language is unclear, subject to multiple interpretations, and difficult to audit.[72] TVA believes that it is imperative that the CIP standards, whose violations must necessarily be described generally at high levels, must be sufficiently clear in terms of what requirements are being imposed on Registered Entities and the ''identify, assess, and correct'' language is too vague to ascertain how compliance will be audited.[73] While SCE&G favors retaining the ''identify, assess, and correct'' concept, SCE&G also contends that it is misplaced in NERC's proposed CIP version 5 Standards where it is embedded in the technical parts of the requirements.[74]

66. Commenters express differing views on the obligations imposed by the ''identify, assess, and correct'' language irrespective of their position on whether

[61] *Id.* at 10.

[62] *Id.* at 12.

[63] *Id.*

[64] *Id.* at 16.

[65] *Id.* at 17.

[66] Alliant, AEP, APPA, Arkansas, SWP, Dominion, G&T Cooperatives, LADWP, MidAmerican, NARUC, OEVC, PG&E, PPL Companies, SCE, Tacoma, Tampa, TAPS, UI.

[67] NextEra Comments at 6.

[68] LADWP Comments at 8–9; Tacoma Power Comments at 2.

[69] MidAmerican Comments at 10.

[70] Ameren, BPA, EEI, EPSA, Exelon, FirstEnergy, Idaho Power, ITC, ISO New England, KCP&L, Luminant, MISO, NASUCA National Grid, NRECA, NextEra, NAGF, Northeast Utilities, NorthWestern, Portland, Southern Indiana, Wisconsin, Xcel.

[71] Encari, GSOC, SPP Parties, SCE&G, SPP RE, and TVA.

[72] SPP RE Comments at 2–3.

[73] TVA Comments at 2–3.

[74] SCE&G Comments at 2.

that language should be retained. For example, MISO indicates that the ''identify, assess, and correct'' language could be interpreted as imposing a new obligation or not imposing a new obligation on responsible entities.[75] MidAmerican and Luminant assert that the ''identify, assess, and correct'' language would not impose a new compliance obligation. However, according to LADWP and OEVC, the ''identify, assess, and correct'' language would impose a new obligation (i.e., to have an ''identify, assess, and correct'' process in place). Other commenters, including GSOC and ITC, ask the Commission to clarify that the ''identify, assess, and correct'' language cannot be separately violated and that only a failure to comply with the underlying substantive requirement can result in a violation.

Commission Determination

67. For the reasons discussed below, the Commission concludes that the ''identify, assess, and correct'' language, as currently proposed by NERC, is unclear with respect to the obligations it imposes on responsible entities, how it would be implemented by responsible entities, and how it would be enforced. Accordingly, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop modifications to the CIP version 5 Standards that address our concerns. Preferably, NERC should remove the ''identify, assess, and correct'' language from the 17 CIP version 5 requirements, while retaining the substantive provisions of those requirements.[76] Alternatively, NERC may propose equally efficient and effective modifications that address the Commission's concerns regarding the ''identify, assess, and correct'' language.[77] The Commission directs NERC to submit the modifications to the CIP Reliability Standards within one year from the effective date of this Final Rule.

68. In Order No. 672, the Commission provided general guidance on the conditions under which a Reliability Standard would be approved under Section 215 of the Federal Power Act.[78] Among other things, the Commission explained that proposed Reliability Standards should be clear and unambiguous regarding what is required for compliance and who is required to comply.[79] Based on our experience with the ongoing development and implementation of the Reliability Standards, including the CIP Reliability Standards, we believe that clarity and certainty in the language of Reliability Standard requirements is necessary to ensure consistent application by responsible entities, as well as consistent enforcement by NERC and the Regional Entities.[80] Language in a requirement that could be subject to multiple interpretations raises the specter of inconsistent application and enforcement, which could result in risks to Bulk-Power System reliability.[81] Therefore, as a fundamental expectation, NERC must strive to develop clear and unambiguous Reliability Standards.

69. As we indicated in the NOPR, we support NERC's move away from a ''zero tolerance'' approach to compliance, the development of strong internal controls by responsible entities, and NERC's development of standards that focus on the activities that have the greatest impact on Bulk-Power System reliability.[82] Thus, we are sympathetic to these underlying motives as described by NERC that resulted in the incorporation of the ''identify, assess, and correct'' language within 17 provisions of the CIP version 5 Standards. Nonetheless, as explained below, the language proposed by NERC is ambiguous and results in an unacceptable amount of uncertainty with regard to consistent application, responsible entities understanding their obligations, and NERC and the regions providing consistent application in audits and other compliance settings.

70. The Commission raised concerns in the NOPR with the ''identify, assess, and correct'' language and sought comment on the implementation and enforceability of the ''identify, assess, and correct'' language. The commenters, however, do not clarify how the ''identify, assess, and correct'' language would be implemented and enforced. Rather, the diversity of explanations provided by commenters reinforces our concerns. In its petition and comments, NERC does not clarify adequately the language and, instead, indicates that it is willing to submit a future compliance filing that ''further outlines the compliance and enforcement aspects of this language, including when entities are expected to self-report or maintain documentation of its self-correcting process for audit, what constitutes potential noncompliance, and the necessary guidance for auditors.''[83] NERC's proposal that the Commission approve this language in numerous requirements of the CIP version 5 Standards, while postponing a detailed explanation regarding the understanding, compliance implications and proper implementation of the proposed language to a future time, is an inadequate approach.

71. Moreover, there is confusion among the commenters as to what the ''identify, assess, and correct'' language requires of responsible entities. For example, commenters differ on whether the ''identify, assess, and correct'' language imposes a new obligation on responsible entities. The Commission raised questions in the NOPR concerning, among other things, reasonable timeframes for identifying and correcting a deficiency, whether the language could be used to avoid audit risk, and how the implementation and performance of the language can be expected to be consistent across responsible entities and regions, but did not receive adequate responses.[84] We received inconsistent explanations in response to these inquiries, which we take as another indication of the vagueness of the ''identify, assess, and correct'' language.

72. Regarding the meaning of the terms ''identify,'' ''assess,'' ''correct,'' and ''deficiencies,'' NERC states that it would be impracticable to develop uniform definitions and that responsible entities are in the best position to define these terms in the context of their internal compliance programs. While we understand NERC's desire to allow for flexibility as responsible entities develop their internal control programs, we are, nonetheless, concerned that the NERC proposal lacks basic definition and guidance that is needed, for example, to distinguish a successful internal control program from one that is inadequate. As a result, we conclude that the ''identify, assess, and correct''

[75] MISO Comments at 4.

[76] The 17 requirements are: CIP–003–5, Requirements R2 and R4; CIP–004–5, Requirements R2 through R5; CIP–006–5 Requirements R1 and R2; CIP–007–5, Requirements R1 through R5; CIP–009–5, Requirement R2; CIP–010–1, Requirements R1 and R2; and CIP–011–1, Requirement R1.

[77] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 186, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[78] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 320–337.

[79] *Id.* P 325.

[80] *See id.* P 327 (stating that a proposed Reliability Standard should include ''a clear criterion or measure of whether an entity is in compliance'' and should ''contain or be accompanied by an objective measure of compliance so that it can be enforced and so that enforcement can be applied in a consistent and non-preferential manner.'').

[81] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 274 (finding that ''it is essential that the Requirements for each Reliability Standard . . . are sufficiently clear and not subject to multiple interpretations.'').

[82] *See* NOPR, 143 FERC ¶ 61,055 at P 57.

[83] NERC Comments at 14.

[84] *See* NOPR, 143 FERC ¶ 61,055 at PP 51, 52, and 54.

language, as currently proposed, injects an unacceptable degree of ambiguity into the otherwise reasonable substantive requirements of the CIP version 5 Standards.

73. As indicated earlier, we support the underlying concerns that prompted the ''identify, assess and correct'' language, namely encouraging the development of strong internal controls and focusing resources on activities that best promote reliability of the Bulk-Power System. We believe, however, that it may be more appropriate for NERC to achieve these goals by articulating defined goals in the compliance and enforcement process and identifying clear expectations that would justify the exercise of enforcement discretion. For example, the Reliability Assurance Initiative process when fully developed may afford a consistent, informed approach that provides incentives for entities to develop robust internal control programs.[85]

74. We emphasize that if NERC wishes to propose modifications other than, or in addition to, removing the ''identify, assess and correct'' language from the CIP version 5 requirements, we will be open to consideration of various approaches for resolving the High Frequency Security Obligations scenario NERC identifies. We understand the concern to be that while it is necessary for Bulk-Power System reliability to identify, control, and minimize violations of requirements addressing this scenario, responsible entities may not be able to prevent all such violations. Moreover, while it is possible that a single violation of such a requirement could result in significant harm to Bulk-Power System reliability, or that multiple or repeated violations by an individual responsible entity could indicate a reliability vulnerability or inadequate internal controls, individual violations of such requirements likely pose a low risk. With respect to these types of requirements, we are receptive to the concept that Bulk-Power System reliability may be better served, at lower cost to responsible entities, for Regional Entities and NERC to provide incentives for them to proactively identify and mitigate potential noncompliance outside the enforcement context by enhancing their internal controls.

75. We would prefer approaches that would not involve the placement of compliance language within the text of the Reliability Standards to address these issues. We understand that NERC has inserted the ''identify, assess, and correct'' language into the CIP Reliability Standard requirements to move its compliance processes towards a more risk-based model. With this objective in mind, we believe that a more appropriate balance might be struck to address the underlying concerns by developing compliance and enforcement processes that would grant NERC and the Regional Entities the ability to decline to pursue low risk violations of the Reliability Standards. Striking this balance could be accomplished through a modification to the Compliance Monitoring and Enforcement Program. We believe that such an approach would: (1) Empower NERC and the Regional Entities to implement risk-based compliance monitoring techniques that avoid zero defect enforcement when appropriate; (2) allow the Commission to retain oversight over the enforcement of Reliability Standards; and (3) ensure that all Reliability Standards are drafted to be sufficiently clear and enforceable.

76. Accordingly, the Commission directs NERC, pursuant to section 215(d)(5) of the FPA, to develop modifications to the CIP version 5 Standards that address our concerns. Preferably, NERC should remove the ''identify, assess, and correct'' language from the 17 CIP version 5 requirements. The Commission directs NERC to submit these modifications for Commission approval within one year from the effective date of this Final Rule. Alternatively, NERC may develop a proposal to enhance the enforcement discretion afforded to itself and the Regional Entities, as discussed above.

B. BES Cyber Asset Categorization and Protection

1. Reliability Based Criteria

NERC Petition

77. Reliability Standard CIP–002–5 requires responsible entities to categorize BES Cyber Systems as having a Low, Medium, or High Impact. NERC states that CIP–002–5 requires ''the identification and categorization of BES Cyber Systems according to specific criteria that characterize their impact for the application of cyber security requirements commensurate with the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the [bulk electric system].''[86] NERC states that the new approach to classifying cyber systems, which requires a minimum classification of ''Low Impact'' for all BES Cyber Systems, ''resulted from a review of the NIST Risk Management Framework for categorizing and applying security controls, a review that was directed by the Commission in Order No. 706.''[87]

NOPR

78. In the NOPR, the Commission pointed out that NERC's proposed categorization process is based on facility ratings, such as generation capacity and voltage levels, whereas the NIST Risk Management Framework categorizes systems based on cyber security principles regarding the confidentiality, integrity, and availability of systems.[88] The Commission stated in the NOPR that NERC's new approach to categorizing BES Cyber Systems, which requires at least a minimum classification of ''Low Impact'' for all BES Cyber System, is a step closer to comprehensively protecting assets that could cause cyber security risks to the bulk electric system.[89] The Commission proposed to accept NERC's proposal, recognizing that the Commission may revisit the categorization of assets under the CIP Reliability Standards at a later date should the need arise.[90]

Comments

79. The commenters generally support the proposed bulk electric system categorization process, with some commenters raisings discrete concerns with certain aspects of the NOPR.

80. NERC, BPA, and CenterPoint support the proposed categorization process. NERC states that the proposed Low, Medium, or High Impact categories were derived from a review of the NIST Risk Management Framework conducted in response to the Commission's directive in Order No. 706.[91] NERC explains that, based on the review of the NIST Risk Management Framework, the standard drafting team determined that a Low, Medium, or High Impact categorization based on facility ratings is appropriate ''because it (1) reflects the well understood and commonly used method for categorizing assets within the electricity sector; (2) provides a clear and measurable method for identifying assets; and (3) directly

[85] The Reliability Assurance Initiative program is a NERC initiative to transform the current compliance and enforcement program into one that focuses on high reliability risk areas and reduces the administrative burden on registered entities. *See http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx.*

[86] NERC Petition at 11.

[87] *Id.* at 15.

[88] NOPR, 143 FERC ¶ 61,055 at P 61.

[89] *Id.* P 59.

[90] *Id.* P 64.

[91] BPA Comments at 6; CenterPoint Comments at 2–3; NERC Comments at 18–19.

relates to a facility's impact on the Bulk Electric System, which is consistent with the NIST Framework approach to categorizing assets based on risk.'' [92]

81. NERC, BPA and CenterPoint comment that, although the proposed reliability-based criteria put forth in CIP version 5 differ from the NIST Risk Management Framework, where the categorization process is based on the loss of confidentiality, integrity, and availability systems, the difference is reasonable. Specifically, NERC, BPA and CenterPoint note that the NIST standards are information protection standards whereas the CIP Standards are reliability standards, which require a slightly different approach to categorization aimed more broadly at the reliability of the Bulk-Power System across all entities rather than categorization by a single organization.[93]

82. TVA states that it ''would be in favor of transitioning to a NIST categorization model if the control scoping and implementation was conducted in accordance with NIST–800–37, revision 1.'' [94] TVA asserts that the NIST Risk Management Framework, if applied correctly, provides near real time management of risks, and establishes responsibility and accountability for information system security. TVA concludes that the NIST Risk Management Framework ''has the potential to provide the utility industry with a proven and effective security framework that includes targeted components uniquely written for the control system environment.'' [95]

83. ITC states that blackstart resources, which are designated as Low Impact under proposed CIP–002–5, should be designated as Medium Impact assets to ensure sufficient protection of the bulk electric system.[96] ITC states that blackstart resources are of similar importance as other assets designated as Medium Impact and, therefore, blackstart resources should be protected as such, including the appropriate VRF designation.[97] ITC avers that blackstart resources ''are analogous to Criteria 2.3 generation resources because they are necessary to avoid an Adverse Reliability Impact as defined by NERC, and should therefore be classified as Medium Impact.'' [98] ITC contends that NERC's rationale for classifying blackstart resources as Low Impact assets is faulty. Specifically, ITC argues that classifying blackstart resources as Low Impact ''because of concerns over additional compliance costs leading to withdrawal of Blackstart resources from the market'' is not an appropriate rationale for approving a reliability rule.[99]

84. SPP RE asserts that the proposed categorization process fails to address connectivity as directed in Order No. 761. Specifically, SPP RE notes that the Commission directed NERC to ''address a cyber asset's connectivity and its potential to compromise the reliable operation of the Bulk-Power System with respect to the BES Cyber Asset categorization criteria.'' [100] SPP RE recommends that the Commission direct NERC to modify the BES Cyber Asset categorization process ''to require control centers performing the functional obligations of Balancing Authority or Generation Operator to be categorized as medium impact at a minimum if the control center systems are network interconnected'' with other control center systems.[101]

85. Tampa seeks clarification concerning the CIP–002–5, Attachment 1 impact rating criteria as they relate to certain generating units. Specifically, Tampa requests clarification ''whether individual units less that 20 MVA (gross nameplate rating) and generating plants/facilities less than 75 MVA (gross aggregate nameplate rating) are excluded from consideration as Low Impact assets.'' [102] Tampa questions whether there is a criterion that would qualify a generation facility as Low Impact besides failing to meet the two criteria that qualify a facility as Medium Impact, or are all remaining generation facilities captured by the Low Impact definition. Tampa also questions whether the bulk electric system definition acts as a floor for Low Impact facilities under which Low Impact facilities would not include facilities that are excluded from the definition of the bulk electric system. Tampa requests that the Commission clarify that only those generation facilities equal to or greater than 1500 MW or that are designated by either a planning coordinator or transmission planner will be considered Medium Impact, with all remaining generating facilities considered Low Impact, subject to any bulk electric system definition floor.[103]

86. Wisconsin questions the applicability section of the proposed CIP version 5 Standards. Specifically, Wisconsin asserts that the CIP version 5 Standards, as written, could be read to exclude reliability coordinators and other entities from the CIP Standards because section 4.2.2 in each of the CIP Standards limits applicability to a responsible entity's bulk electric system facilities. Wisconsin notes that neither reliability coordinators nor interchange authorities have bulk electric system facilities. Wisconsin requests that the Commission require NERC to remove section 4.2.2 from each of the CIP Standards to ensure that the standards are clear and unambiguous with regard to applicability.[104]

Commission Determination

87. The Commission finds reasonable the categorization of BES Cyber Systems set forth in Reliability Standard CIP–002–5. The new approach to categorizing BES Cyber Systems, which requires at least a minimum classification of Low Impact for BES Cyber Systems, better assures the protection of assets that can cause cyber security risks to the bulk electric system. The Commission may revisit the categorization of BES Cyber Assets should experience gained from implementing and enforcing Reliability Standard CIP–002–5 warrant such action.

88. With regard to ITC's comments on blackstart resources, we are not persuaded that blackstart resources should be designated as Medium Impact BES Cyber Assets. While we believe that system recovery is important to the reliable operation of the Bulk-Power System, we accept the ERO's approach on this matter as adequate. Further, since blackstart resources are designated as Low Impact, entities may have discretion regarding appropriate security controls that will apply. Although we determine not to direct changes at this time, we may revisit this determination after implementation of the CIP version 5 Standards if we determine that blackstart resources lack a sufficient level of protection. ITC is also encouraged to raise its concerns regarding blackstart resources through NERC's standards development process.

89. With respect to SPP RE's concerns on the issue of connectivity, the Commission does not direct changes at this time. The majority of bulk electric system control centers are designated as High Impact BES Cyber Assets under Reliability Standard CIP–002–5 because of the interconnected nature of these

[92] NERC Comments at 18–19.

[93] NERC Comments at 19; BPA Comments at 6; CenterPoint Comments at 2–3.

[94] TVA Comments at 4.

[95] *Id.*

[96] ITC Comments at 8.

[97] *Id.*

[98] *Id.* at 9.

[99] *Id.*

[100] SPP RE Comments at 5 (citing Order No. 761, 139 FERC ¶ 61,058 at P 91).

[101] *Id* at 6.

[102] Tampa Comments at 4.

[103] *Id.*

[104] Wisconsin Comments at 4.

facilities. We share SPP RE's concern, however, that balancing authority and generation operator control centers are interconnected and some of these facilities will likely fall into the Low Impact category. The Commission may revisit this determination if we find that Low Impact control centers lack a sufficient level of protection following implementation of the CIP version 5 Standards.

90. As noted above, Tampa requests clarification concerning the CIP–002–5 impact rating criteria as it relates to certain generating units. The Commission clarifies that, consistent with our determinations in Order No. 773, only those plants, facilities, and assets that are covered under the bulk electric system definition, or included in the definition under the exceptions process in Appendix 5C of the NERC rules of procedure, will be required to comply with the CIP Reliability Standards.[105] Similarly, the Low Impact category will not include assets that are not covered under the bulk electric system definition or excluded from the definition under the exceptions process in Appendix 5C of the NERC rules of procedure. The Commission understands that the Low Impact category is intended to address all BES Cyber Systems on the bulk electric system that do not meet the criteria for Medium or High Impact.

91. With respect to Wisconsin's comments, we do not agree that section 4.2.2 excludes reliability coordinators and interchange authorities from the CIP Reliability Standards as the facilities associated with both classes of entities can be accurately described as BES Cyber Systems under the NERC glossary. Section 4.1 of the applicability section of CIP–002–5 explicitly identifies reliability coordinators (section 4.1.6) and interchange authorities (section 4.1.5) as applicable entities. Section 4.2 of the Reliability Standard identifies the ''Facilities, systems and equipment'' owned by responsible entities ''to which these requirements [of CIP–002–5] are applicable,'' and section 4.2.2 provides that for all entities other than distribution providers, the applicable facilities are ''[a]ll BES Facilities.'' In Order No. 773, we determined that the term ''bulk electric system'' incorporates ''associated equipment'' that broadly includes facilities such as control centers and other assets.[106] We are satisfied that the CIP version 5 Standards explicitly apply to reliability coordinators and interchange authorities and that they are not precluded from having applicable facilities based on the language of the standards.

92. According to NERC, development of the BES Cyber System categorization process included a review of the NIST Risk Management Framework.[107] There is a significant distinction, however, between NERC's categorization process and the NIST Risk Management Framework. In particular, NERC's categorization process is based on facility ratings, such as generation capacity and voltage levels.[108] In contrast, the NIST Risk Management Framework categorizes systems based on cyber security principles regarding the confidentiality, integrity, and availability of systems. Commenters such as NERC and BPA aver that such differences are reasonable and justified because the NIST standards are information protection standards whereas the CIP Standards are reliability standards, aimed more broadly at the reliability of the Bulk-Power System across all entities rather than categorization by a single organization. We find this explanation to be reasonable and, therefore, we do not direct any modifications regarding the BES Cyber System categorization process in Reliability Standard CIP–002–5 at this time. However, as discussed below, the NIST Risk Management Framework, as well as other issues relating to the CIP Reliability Standards, will be the subject of a future staff-led technical conference.

2. Protection of Low Impact BES Cyber Assets

NERC Petition

93. Reliability Standard CIP–003–5, Requirement R2, which pertains to the obligations for BES Cyber Systems identified as Low Impact, provides:

R2. Each Responsible Entity for its assets identified in CIP–002–5, Requirement R1, Part R1.3 [i.e., low impact systems], shall implement, in a manner that identifies, assesses, and corrects deficiencies, one or more documented cyber security policies that collectively address the following topics, and review and obtain CIP Senior Manager approval for those policies at least once every 15 calendar months: . . .

2.1 Cyber security awareness;

2.2 Physical security controls;

2.3 Electronic access controls for external routable protocol connections and Dial-up Connectivity; and

2.4 Incident response to a Cyber Security Incident.

An inventory, list, or discrete identification of low impact BES Cyber Systems or their BES Cyber Assets is not required.

This is the only CIP version 5 requirement applicable to Low Impact systems.

NOPR

94. In the NOPR, the Commission expressed concern with Requirement R2 of Reliability Standard CIP–003–5, which requires responsible entities to ''implement . . . documented cyber security policies'' that address: (1) Cyber security awareness, (2) physical security controls, (3) electronic access controls and (4) incident response to a cyber security incident. The NOPR explained that Requirement R2 sets forth the single compliance obligation for BES Cyber Systems categorized as Low Impact.[109] The Commission expressed concern that NERC's proposal to limit the protections for Low Impact BES Cyber Systems to documented policies, as opposed to requiring specific cyber security protections, could result in ambiguities that lead to inconsistent and inefficient implementation of the CIP Reliability Standards with regard to Low Impact BES Cyber Systems and may not provide an adequate roadmap for responsible entities to follow to ensure the reliable operation of the bulk electric system.[110]

95. The NOPR proposed to direct that NERC develop a modification to CIP–003–5, Requirement R2, to require responsible entities to adopt specific, technically-supported cyber security controls for Low Impact assets, as opposed to the proposed unspecified policies.[111] The NOPR sought comment on (1) The value of adopting specific controls for Low Impact assets that reflect their cyber security risk level and (2) the lack of a requirement to have an inventory, list or discrete identification of Low Impact BES Cyber Systems.

Comments

Low Impact Protections

96. The majority of commenters oppose the Commission proposal to require entities to adopt specific cyber security controls for Low Impact assets and support CIP–003–5, Requirement

[105] *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure,* Order No. 773, 141 FERC ¶ 61,236, at P 43 (2012) (noting that ''[t]he [bulk electric system] definition, coupled with the exception process will ensure that facilities not necessary for the operation of the interconnected transmission network will be properly categorized.''), *order on reh'g,* Order No. 773–A, 143 FERC ¶ 61,053, *order denying clarification,* 144 FERC ¶ 61,174 (2013).

[106] Order No. 773, 141 FERC ¶ 61,236 at P 53 (noting that ''core [bulk electric system] definition also continues to capture equipment associated with the facilities included in the bulk electric system.'').

[107] *See* NERC Petition at 31.

[108] *See* NOPR at, 143 FERC ¶ 61,055 P 63.

[109] NOPR, 143 FERC ¶ 61,055 at P 66.

[110] *Id.* P 70.

[111] *Id.*

R2 as filed. Other commenters support NERC's proposal, but also believe that additional guidance regarding the protection of Low Impact assets would be beneficial. Several commenters do not support NERC's proposal on Low Impact assets, but not based on the concerns raised in the NOPR.

97. The majority of commenters support proposed CIP–003–5, Requirement R2 as filed and oppose the NOPR proposal to require specific, technically-supported controls for Low Impact BES Cyber Assets.[112] Generally, commenters state that the CIP–003–5, Requirement R2 requirement for responsible entities to develop and implement documented cyber security policies is appropriate for assets that will be categorized as having a limited effect on the bulk electric system. NERC characterizes the requirement to develop and implement cyber security policies for Low Impact assets as ''a significant step in more comprehensively protecting assets that could cause cyber security risks to the bulk electric system.'' [113]

98. EEI asserts that the proposed protections for Low Impact assets include basic physical and electronic perimeter-type access controls for every bulk electric system facility housing any BES Cyber Asset, including Low Impact assets.[114] CenterPoint, Consumers Energy, and Holland comment that CIP–003–5, Requirement R2 establishes an auditable requirement that responsible entities develop and implement cyber security policies covering the four areas identified in Requirement R2.

99. APPA, Holland and others, comment that requiring responsible entities to adopt specific cyber security controls for Low Impact BES Cyber Systems would significantly increase the cost and administrative burden associated with the protection of Low Impact BES Cyber Systems with little to no increase in bulk electric system reliability.[115] NextEra, among other commenters, asserts that a requirement to adopt specific, technically-supported controls for Low Impact BES Cyber Systems would take time and resources away from the protection of Medium and High Impact BES Cyber Systems.[116] ISO New England raises a concern that adopting a new requirement for specific controls for Low Impact assets could have unintended consequences, such as the withdrawal of blackstart resources.[117]

100. Some comments oppose the NOPR proposal to require specific, technically-supported controls for Low Impact BES Cyber Assets, but acknowledge that additional guidance regarding the protection of Low Impact assets would be beneficial.[118] Specifically, SPP Parties, LADWP and KCP&L posit that additional guidance would aid responsible entities in understanding what security measures they should adopt for Low Impact assets, as well as help ensure that audit requirements are clear. AEP suggests that, if the Commission directs NERC to require prescriptive controls for Low Impact assets, such requirements should include a caveat that the controls will only be implemented where technically feasible.

101. OEVC and SPP RE do not support proposed CIP–003–5, Requirement R2, but for different reasons. OEVC states that the category of Low Impact BES Cyber Assets is flawed because it encompasses entities that do not have an impact on the bulk electric system and, as such, exceeds the authority granted in FPA section 215.[119] SPP RE claims that only requiring documented policies that cover broadly-defined topics provides insufficient protection for Low Impact BES Cyber Assets.[120] SPP RE comments that the failure to require specific controls is problematic for auditors in that CIP–003–5, Requirement R2 lacks specific control objectives with which to measure an entity's compliance. SPP RE recommends defining an appropriate set of control objectives as opposed to defining the controls themselves.[121]

102. NARUC raises a concern that the breadth of the Low Impact category has the potential to blur the clear jurisdictional lines in FPA section 215. NARUC concludes that a ''lighter touch,'' such as NERC's proposed documented policies under CIP–003–5, Requirement R2, is the appropriate manner to address assets that by definition are low priority.[122]

Inventory of Low Impact Assets

103. The majority of commenters oppose adopting a requirement for responsible entities to develop and maintain an inventory, list or discrete identification of Low Impact BES Cyber Assets.[123] NERC, EEI, Idaho Power, NRECA, TVA, Xcel and others argue that developing and maintaining an inventory or list of Low Impact assets would create an unnecessary administrative burden without any corresponding reliability benefit.[124] Luminant comments that a requirement to develop and maintain an inventory or list of Low Impact assets would be an administrative task that would create additional intelligence source data that must be protected.[125] EEI suggests that Low Impact assets should be identified at the site facility level and not the individual device level.[126]

104. According to NERC, no added reliability benefit would result from a separate requirement to create and continuously update a list of Low Impact assets. NERC notes, however, that CIP–002–5 Part 1.3 requires responsible entities to identify each bulk electric system asset that contains a Low Impact BES Cyber System and, therefore, responsible entities should have a list of bulk electric system locations containing Low Impact BES Cyber Systems that could be used for audit purposes.[127] In contrast, SPP RE states that the lack of a requirement for responsible entities to maintain an inventory of Low Impact BES Cyber Assets poses an audit challenge because neither the responsible entity nor the auditor will have a reasonable assurance that every BES Cyber System or BES Cyber Asset has been accounted for and properly categorized.[128]

105. LADWP supports removing the language from CIP–003–5, Requirement R2, stating that an inventory or list of Low Impact BES Cyber Systems or BES Cyber Assets is not required. LADWP

[112] *See, e.g.,* Comments of Alliant, Ameren, AEP, APPA, Arkansas, BPA, CenterPoint, Consumers Energy, Dominion, EEI, Holland, Idaho Power, ISO New England, Luminant, MidAmerican, NARUC, National Grid, NRECA, NextEra, NERC, NAGF, Northeast Utilities, NIPSCO, PG&E, Pepco, Portland, PPL Companies, Southern Indiana, SWP, Tacoma, Tampa, TVA, TAPS, UI, Xcel.

[113] NERC Comments at 21.

[114] EEI Comments at 13–14.

[115] *E.g.,* APPA Comments at 14; SWP Comments at 5; Consumers Energy Comments at 3; Idaho Power Comments at 2–3; NARUC Comments at 5–6; NRECA Comments at 8–9; PHI Comments at 4; SCE Comments at 4; TAPS Comments at 4.

[116] NextEra Comments at 5; Alliant Comments at 5; EEI Comments at 14; KCP&L Comments at 4; NRECA Comments at 8–9.

[117] ISO New England Comments at 9.

[118] *E.g.,* SPP Parties Comments at 3; LADWP Comments at 11; KCP&L Comments at 4.

[119] OEVC Comments at 10.

[120] SPP RE Comments at 6.

[121] *Id.* at 7–8.

[122] NARUC Comments at 6.

[123] *See* Comments of Ameren, Arkansas, BPA, Consumers Energy, Dominion, EEI, Idaho Power, LADWP, Luminant, MidAmerican, NRECA, NERC, NAGF, NIPSCO, PG&E, PEPCO, SCE, SPP Parties, Tampa, TVA, UI, and Xcel.

[124] *See also* Ameren Comments at 11; BPA Comments at 8; Consumers Energy Comments at 4; Dominion Comments at 10; SCE Comments at 4; SPP Parties at 3; Luminant Comments at 4; NAGF Comments at 4; PG&E Comments at 7; PHI Comments at 4; SCE Comments at 4; Tampa Comments at 5–6; and UI Comments at 6.

[125] Luminant Comments at 4.

[126] EEI Comments at 14–15.

[127] NERC Comments at 22–23.

[128] SPP RE Comments at 7–8.

agrees with the Commission that the process of identifying and categorizing assets into Low, Medium, and High Impact categories will lend itself to compiling a list or inventory of all BES Cyber Assets, including Low Impact assets. LADWP suggests that, since entities will already be maintaining a list for internal classification purposes, a requirement to maintain a list of Low Impact BES Cyber Assets would not impose additional burdens.[129]

Commission Determination

Specific Controls for Low Impact BES Cyber Systems

106. Based on the explanations provided by NERC and other commenters, we adopt the NOPR proposal with modifications. As we explain below, while we do not require NERC to develop specific controls for Low Impact facilities, we do require NERC to address the lack of objective criteria against which NERC and the Commission can evaluate the sufficiency of an entity's protections for Low Impact assets. While NERC may address this concern by developing specific controls for Low Impact facilities, it has the flexibility to address it through other means, including those discussed below.

107. As highlighted by commenters, the adoption of the Low Impact BES Cyber Asset category will expand the protections offered by the CIP version 5 Standards to additional assets that could cause cyber security risks to the bulk electric system. As discussed above, categorizing BES Cyber Systems based on their Low, Medium, or High Impact on the reliable operation of the bulk electric system, with all BES Cyber Systems being categorized as at least Low Impact, offers more comprehensive protection of the bulk electric system. The CIP version 5 Standards, however, do not require specific controls for Low Impact assets nor do they contain clear, objective criteria from which to judge the sufficiency of the controls ultimately adopted by responsible entities for Low Impact BES Cyber Systems.

108. In addition, the absence of objective criteria to evaluate the controls chosen by responsible entities for Low Impact assets introduces an unacceptable level of ambiguity and potential inconsistency into the compliance process, and creates an unnecessary gap in reliability. This ambiguity will make it difficult for registered entities to develop, and NERC and the regions to objectively evaluate, the effectiveness of procedures developed to implement Reliability Standard CIP–003–5, Requirement R2. Therefore, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to the CIP version 5 Standards to address this concern. We believe that NERC can effectively address this concern in a number of ways, including: (1) Requiring specific controls for Low Impact assets, including subdividing the assets into different categories with different defined controls applicable to each subcategory; (2) developing objective criteria against which the controls adopted by responsible entities can be compared and measured in order to evaluate their adequacy, including subdividing the assets into different categories with different defined control objectives applicable to each subcategory; (3) defining with greater specificity the processes that responsible entities must have for Low Impact facilities under Reliability Standard CIP–003–5, Requirement R2; or (4) another equally efficient and effective solution. We believe that this approach allows NERC the flexibility to develop appropriate modification(s), while also considering the stakeholder concerns expressed in NOPR comments regarding the possible rigidity of requiring a ''one-size-fits-all'' set of controls.

109. We disagree with OEVC's assertion that the Low Impact category is flawed because it applies to responsible entities that do not have an impact on the bulk electric system and, as such, exceeds the authority granted in FPA section 215. Reliability Standard CIP–002–5 encompasses cyber assets that meet the definition of a BES Cyber Asset and that are associated with facilities that are part of the bulk electric system.[130] Further, only those cyber assets that meet the definition of a BES Cyber Asset and are a part of a BES Cyber System must comply with the controls in the CIP Reliability Standards. Accordingly, Low Impact assets fall within the scope of FPA section 215. While SPP RE raises concerns regarding the auditability of Reliability Standard CIP–003–5, Requirement R2, in the absence of specific control objectives, other commenters such as CenterPoint and Consumers Energy assert that Requirement R2 establishes an auditable requirement that responsible entities both develop and implement cyber security policies addressing the four identified areas. We believe that our directive to NERC will address any concerns over the auditability of the protections adopted under CIP–003–5, Requirement R2.

110. As discussed above, NERC has flexibility in how it addresses our concern. For example, NERC could follow the recommendation of SPP RE and define an appropriate set of control objectives for Low Impact assets, rather than define the specific controls that would apply to Low Impact assets. Alternatively, NERC may propose specific controls that apply to Low Impact assets, including subdividing the assets into different categories with different defined controls or control objectives applicable to each subcategory, or it could define with greater specificity the processes that responsible entities must have for Low Impact facilities under CIP–003–5, Requirement R2. NERC may also propose an alternative approach that addresses our concern in an equally efficient and effective manner. Whatever approach NERC decides to take, we emphasize that the criteria NERC proposes for evaluating a responsible entities' protections for Low Impact facilities should be clear, objective, commensurate with their impact on the system, and technically justified.

Inventories of Low Impact BES Cyber Systems

111. In the NOPR, the Commission sought comment on the benefit of requiring a list or inventory of Low Impact BES Cyber Systems.[131] Based on the comments, we are persuaded that it would be unduly burdensome to require responsible entities to create and maintain an inventory of Low Impact assets for audit purposes. Creating and maintaining such a list could also divert resources away from the protection of Medium and High Impact assets. Further, we note that NERC's approach is consistent with its move away from embedding documentation obligations in the substantive requirements of Reliability Standards.

112. We agree with NERC's comment that, while not requiring a list or inventory, ''NERC stresses that entities will need to be able to demonstrate compliance with CIP–002–5, which requires such entities to identify the assets that are associated with its Low

[129] LADWP Comments at 13.

[130] *See* Reliability Standard CIP–002–5 (Cyber Security—BES Cyber System Categorization) at Section 3 (the stated purpose of CIP–002–5 is ''[t]o identify and categorize BES Cyber Systems and their associated BES Cyber Assets for the application of cyber security requirements commensurate with the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the [bulk electric system].'').

[131] *See* NOPR, 143 FERC ¶ 61,055 at P 71.

Impact BES Cyber Systems.'' [132] Thus, NERC indicates that, while not necessarily in the form of a discrete list, an entity must have the ability to identify the nature and location of all Low Impact assets that it owns or controls for audit and compliance purposes. Likewise, as explained by NERC, pursuant to Reliability Standard CIP–002–5, Requirement R1, Part 1.3, auditors have the ability to ensure that Low Impact systems are accounted for by confirming that a responsible entity has identified ''each asset that contains a low impact BES Cyber System[.]'' [133] We find this explanation to be reasonable.

C. Proposed Definitions

113. In its petition, NERC proposes nineteen CIP-related definitions for inclusion in the NERC Glossary. This includes fifteen new definitions and four revised definitions, as well as the retirement of two definitions.[134] The NOPR proposed to approve the definitions for inclusion in the NERC Glossary. The NOPR also sought comment on certain aspects of the proposed definitions. The Commission stated in the NOPR that, depending on the adequacy of the explanations provided in response to the NOPR questions, the Commission may direct NERC to develop modifications to certain proposed definitions to eliminate ambiguities and ensure that BES Cyber Assets are adequately protected.

114. As discussed below, we approve the nineteen definitions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop requirements that address issues raised by the definitions and to submit an informational filing.

1. Definition—BES Cyber Asset

NERC Petition

115. NERC proposes the following definition of a BES Cyber Asset:

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems. (A Cyber Asset is not a BES Cyber Asset if, for 30 consecutive calendar days or less, it is directly connected to a network within an ESP, a Cyber Asset within an ESP, or to a BES Cyber Asset, and it is used for data transfer, vulnerability assessment, maintenance, or troubleshooting purposes.)

a. 15-Minute Parameter

NOPR

116. The NOPR sought comment on the purpose and effect of the 15-minute parameter in the BES Cyber Asset definition. In particular, the NOPR sought comment on the types of Cyber Assets that would meet the ''within 15 minutes'' parameter.[135] Further, the NOPR sought comment on the types of assets or devices that the 15-minute parameter would exclude and, in particular, whether the ''within 15 minutes'' parameter excludes devices that have an impact on the reliable operation of the bulk electric system.[136] The NOPR also sought comment on whether the use of a specified time period as a basis for identifying assets for protection is consistent with the procedures adopted under other cyber security standards, such as the NIST Risk Management Framework, that apply to industrial control and Supervisory Control and Data Acquisition (SCADA) systems, as well as traditional information technology systems.[137]

Comments

117. Most commenters support the 15-minute parameter,[138] stating that the 15-minute parameter is consistent with existing Commission-approved Reliability Standards. Other commenters contend that the 15-minute parameter is arbitrary and lacks justification.

118. NERC, AEP, EEI, Idaho Power and PPL state that the proposed 15-minute parameter provides a level of consistency for the identification of BES Cyber Assets that could have a real-time impact on the reliability of the bulk electric system.[139] Similarly, KCP&L and UI support the 15-minute parameter as a proxy for real-time operations, and KCP&L explains that the proposed definition should not automatically exempt any assets that have an impact on the reliable operation of the bulk electric system.[140]

119. NERC, Luminant, and MISO comment that the 15-minute parameter is consistent with Commission-approved reliability standards.[141] Luminant notes that 15-minute parameter is consistent with the disturbance recovery period under Reliability Standard BAL–002–1. NERC and MISO state that the Commission has previously approved the use of a 15-minute parameter to identify generation assets under the CIP version 4 Standards.[142]

120. According to NERC, the 15-minute parameter will typically include SCADA, EMS systems transmission protection systems, and generation control systems. NERC states that the 15-minute parameter will generally exclude systems that collect data for engineering analysis and support, and maintenance, and generally includes systems that provide input to an operator for real-time operations or trigger automated real-time operations.[143] Tampa asserts that Cyber Assets and BES Cyber Systems that actively and directly support the reliable operation of the bulk electric system would be captured under the proposed definition since such assets need to be available at all times.[144]

121. NIPSCO and OEVC contend that the 15-minute parameter is arbitrary and unsupported. NIPSCO states that it is not clear how the 15-minute parameter should be tested or determined under the proposed definition and questions whether responsible entities should be running studies or analysis addressing the loss of cyber assets or whether the 15-minute parameter should be attributed to a cyber asset based on the associated facility.[145] OEVC argues that NERC has not explained the 15-minute parameter and opines that the 15-minute parameter is ''unnecessary as it imposes an arbitrary time period.'' [146]

[132] NERC Comments at 22.

[133] Reliability Standard CIP–002–5 (Cyber Security—BES Cyber System Categorization), at Requirement 1, Part 1.3.

[134] Newly proposed definitions include BES Cyber Asset, BES Cyber System, BES Cyber System Information, CIP Exceptional Circumstances, CIP Senior Manager, Control Center, Dial-up Connectivity, Electronic Access Control or Monitoring Systems (EACMS), Electronic Access Point (EAP), External Routable Connectivity, Interactive Remote Access, Intermediate System, Physical Access Control Systems (PACS), Protected Cyber Assets (PCA), and Reportable Cyber Security Incident. Revised definitions include Cyber Assets, Cyber Security Incident, Electronic Security Perimeter (ESP), and Physical Security Perimeter (PSP). Retired definitions include Critical Assets and Critical Cyber Assets.

[135] NOPR, 143 FERC ¶ 61,055 at P 77.

[136] *Id.*

[137] *Id.*

[138] *E.g.,* Ameren, AEP, EEI, Idaho Power, KCP&L, Luminant, MidAmerican, MISO, NERC, NAGF, PPL, Tampa, UI.

[139] AEP Comments at 6; EEI Comments at 26; Idaho Power Comments at 3–4; NERC Comments at 24; PPL Comments at 6.

[140] KCPL Comments at 4, UI Comments at 7–8.

[141] Luminant Comments at 4; MISO Comments at 6; NERC Comments at 25.

[142] NERC Comments at 24; MISO Comments at 6.

[143] NERC Comments at 26–27. *See also* Tampa Comments at 9.

[144] Tampa Comments at 9.

[145] NIPSCO Comments at 5.

[146] OEVC Comments at 9.

SPP RE states that it cannot comment on whether the 15-minute parameter is appropriate to establish a distinction between real-time and non-real time operations, but SPP RE is concerned with the audit implications raised by the 15-minute parameter.[147]

Commission Determination

122. We approve NERC's proposed definition of BES Cyber Asset. Based on the comments, we understand that the 15-minute parameter is intended to capture assets involved in real-time operations, such as systems that provide input to an operator for real-time operations or trigger automated real-time operations. According to NERC, ''the 15-minute parameter is not about detecting and responding to a Cybersecurity Incident within 15 minutes; rather the 15-minute parameter is about identifying those assets that, when called upon in real-time or rendered unavailable in real-time, could impact reliable operations.'' [148] The 15-minute parameter is also not without precedent since the Commission approved similar language in the CIP version 4 Standards with respect to generating units.[149]

123. As explained by NERC, the 15-minute parameter will typically result in the identification of SCADA, Energy Management Systems, transmission protection systems, and generation control systems as BES Cyber Assets.[150] Further, according to NERC, ''[t]ypical systems that might be excluded by the 15-minute parameter are systems that collect data for engineering analysis and support, and maintenance rather than providing input to the operator for real-time operations or triggering automated real-time operations. Such excluded systems would include those used to collect data for the purpose of determining maintenance schedules for assets such as transformers or for engineering analysis.'' [151] While NERC provides these generalized expectations, NERC also explains that ''whether a particular asset is included or excluded from the definition of BES Cyber Asset is necessarily dependent upon the individual facts and circumstances of how an entity uses that asset.'' [152] We also observe that some commenters express concern over using a time period to determine the impact of a cyber system. Since the identification of BES Cyber Assets is a critical step to applying the CIP version 5 Standards, we are interested in better understanding more fully the scope of assets that will be identified as BES Cyber Assets as a result of the application of the 15-minute parameter.

124. Accordingly, the Commission directs NERC to conduct a survey of Cyber Assets that are included or excluded under the new BES Cyber Asset definition during the CIP version 5 Standards implementation periods. Such data will help provide a better understanding of the BES Cyber Asset definition. Based on the survey data, NERC should explain in an informational filing the following: (1) Specific ways in which entities determine which Cyber Assets meet the 15 minute parameter; (2) types or functions of Cyber Assets that are excluded from being designated as BES Cyber Assets and the rationale as to why; (3) common problem areas with entities improperly designating BES Cyber Assets; and (4) feedback from each region participating in the implementation study on lessons learned with the application of the BES Cyber Asset definition. The informational filing should not provide a level of detail that divulges CEII data. This filing should also help other entities implementing CIP version 5 in identifying BES Cyber Assets.

125. The Commission directs NERC to submit the informational filing one year after the effective date of this Final Rule. Based on the information in the informational filing, the Commission may revisit whether the BES Cyber Asset definition should include the 15-minute parameter.

b. 30-Day Exemption

NOPR

126. NERC's proposed definition of BES Cyber Asset provides in part that ''[a] Cyber Asset is not a BES Cyber Asset if, for 30 consecutive calendar days or less, it is directly connected to a network within an [Electronic Security Perimeter], a Cyber Asset within an [Electronic Security Perimeter], or to a BES Cyber Asset, and it is used for data transfer, vulnerability assessment, maintenance, or troubleshooting purposes.'' In the NOPR, the Commission sought comment on the purpose and anticipated effect of the 30-day exemption language in the BES Cyber Asset definition. Specifically, the Commission sought comment on whether the clause could result in the introduction of malicious code or new attack vectors to an otherwise trusted and protected system, as demonstrated in recent real-world incidents.[153] In addition, the NOPR sought comment on the types of Cyber Assets used for ''data transfer, vulnerability assessment, maintenance, or troubleshooting purposes,'' as this language is used in the BES Cyber Asset definition.[154]

Comments

127. Most commenters support the proposed 30-day exemption.[155] NERC and other commenters state that the 30-day exemption is necessary because removing the language would require responsible entities to implement the full set of CIP version 5 requirements on transient systems,[156] which they assert would be impractical and costly.[157] EEI supports the 30-day exemption and maintains that it would be ''virtually impossible'' for entities to prove compliance with full-time physical security protections around portable devices or programmable electronic devices that are briefly connected to a network and then removed. EEI states that ''to practically and auditably preserve the stringent protections in place around BES Cyber Assets as currently defined, the temporarily connected devices . . . exclusion must be preserved.'' [158]

128. While some commenters acknowledge that connecting test equipment and other transient systems to trusted networks introduces new attack vectors and potentially malicious code, several commenters, such as MidAmerican, argue that BES Cyber Systems will have adequate security protections by virtue of implementing the CIP version 5 Standards as proposed.[159] Specifically, NERC and others maintain that, since CIP–007–5,

[147] SPP RE Comments at 8–9.

[148] NERC Comments at 26. Further, NERC states that ''[t]he 15-minute parameter is essentially used as a measurable proxy for real-time operations in the CIP context,'' *Id.* at 25. NERC explains that the NERC Glossary defines the term ''Real-Time'' as ''[p]resent time as opposed to future time.'' The CIP drafting team chose not to use this definition in defining BES Cyber Asset in order to provide a more measurable time frame and avoid confusion during implementation. *Id.*

[149] *See* Order No. 761, 139 FERC ¶ 61,058 at P 35 (2012).

[150] *See* NERC Comments at 26.

[151] *Id.*

[152] *Id.* at 27.

[153] NOPR, 143 FERC ¶ 61,055 at P 78.

[154] *Id.*

[155] NERC, EEI, Ameren, AEP, Tacoma, CenterPoint, UI, Dominion, ISO New England, MidAmerican, Exelon, National Grid, NextEra, NorthWestern, PPL Companies, and Wisconsin.

[156] NERC states that ''[a]n example of such a transient device is a laptop connected on a temporary basis to run vulnerability assessment software or to perform computer network traffic analysis.'' NERC Comments at 28.

[157] UI Comments at 8; G&T Cooperatives Comments at 14; NERC Comments at 28.

[158] EEI Comments at 26.

[159] CenterPoint Comments at 5; G&T Cooperatives Comments at 14–15; ISO–NE Comments at 11; MidAmerican Comments at 18.

Requirement R3 requires the prevention of malicious code, BES Cyber Systems will be safeguarded from threats posed by transient systems.

129. Encari and KCP&L do not support the 30-day exemption in the BES Cyber Asset definition. Encari states that the proposed BES Cyber Asset definition does not adequately address risks posed by transient or temporarily connected systems, adding that the 30-day exemption period appears ''arbitrary.'' [160] Encari also states that this language is prone to abuse, arguing that entities could briefly disconnect Cyber Assets regularly used for used for data transfer, vulnerability assessment, maintenance, or troubleshooting purposes in order to restart the 30-day qualification period, making it relatively easy to circumvent CIP implementation on transient systems.

130. KCP&L remarks that ''due to a lack of alternative protective measures,'' it does not support the 30-day language excluding temporarily connected systems.[161] KCP&L believes that implementation of the CIP version 5 standards on transient systems, while burdensome, will prevent a gap in protective measures.[162]

131. Tacoma Power recommends that, since there is no clear guidance as to how transient systems should be managed to ensure malicious code is not introduced into protected environments, clarification is needed.[163]

Commission Determination

132. Based on the explanation provided by NERC and other commenters, we will not direct modifications regarding the 30-day exemption in the definition of BES Cyber Asset. While we are persuaded that it would be unduly burdensome for responsible entities to treat all transient devices as BES Cyber Assets, we remain concerned whether the CIP version 5 Standards provide adequately robust protection from the risks posed by transient devices. Accordingly, as discussed below, we direct NERC to develop either new or modified standards to address the reliability risks posed by connecting transient devices to BES Cyber Assets and Systems.

133. As explained by NERC, the 30-day exemption is intended to remove transient devices from the scope of the CIP version 5 Standards. We recognize that including transient devices in the definition of BES Cyber Asset would subject transient devices to the full suite of cyber security protections in the CIP version 5 Standards. We are persuaded by commenters' explanations that it would be unduly burdensome to protect transient devices in the same manner as BES Cyber Assets because transient devices are portable and frequently connected and disconnected from systems.

134. NERC and other commenters also assert that the CIP version 5 Standards require the protection of BES Cyber Assets from malicious code, thus obviating the need to include transient devices within the scope of the BES Cyber Asset definition. For example, NERC avers that ''responsible entities have an affirmative obligation pursuant to CIP–007–5 to prevent malicious code from being introduced on the applicable BES Cyber Systems, no matter where it might originate.'' [164] However, relying on a single security control to protect information systems is contrary to the fundamental cyber security concept of defense-in-depth, which the Commission continues to believe is the most appropriate way to address cyber security. A transient device introduced directly into a system bypasses most of the protection provided by the layers of security controls provided by the CIP Reliability Standards. It cannot be assumed that anti-malware programs are completely effective in detecting, removing, and blocking malware, especially when they are commonly thwarted by the introduction of zero-day attacks.[165]

135. As the Commission highlighted in the NOPR, transient devices have been the source of incidents where malware was introduced into electric generation industrial control systems in real-world situations.[166] Further, since these devices can move between electronic security perimeters, transient devices could spread malware across a responsible entity's BES Cyber Systems absent appropriate controls. While we agree that it would be overly-burdensome to include transient devices in the BES Cyber Asset definition, we agree with Encari and KCP&L that there is a gap in the CIP version 5 Standards regarding transient devices, and these devices pose a risk to BES Cyber Assets that is not addressed in an adequately robust manner in the CIP version 5 Standards.

136. Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop either a new or modified Reliability Standard that addresses the risks posed by transient devices. For example, the requirements should recognize that transient devices, unlike BES Cyber Assets, are generally portable and frequently connected and disconnected from systems. The Commission expects NERC to consider the following security elements when designing a Reliability Standard for transient devices and removable media: (1) Device authorization as it relates to users and locations; (2) software authorization; (3) security patch management; (4) malware prevention; (5) detection controls for unauthorized physical access to a transient device and; (6) processes and procedures for connecting transient devices to systems at different security classification levels (i.e. High, Medium, Low Impact). We believe that NIST SP 800–53 Maintenance and Media Protection security control families, as well as the existing Requirements in CIP–004–5, CIP–006–5, and CIP–007–5, can serve as a guide to NERC and the industry in the development of appropriate reliability objectives for transient devices. We believe that addressing transient devices in a new or modified Reliability Standard as discussed above provides a balanced approach to addressing the risks associated with transient devices without imposing unduly burdensome requirements on responsible entities.

2. Definition—Control Center

NERC Petition

137. NERC proposes the following definition of a control center:

> One or more facilities hosting operating personnel that monitor and control the Bulk Electric System (BES) in real-time to perform the reliability tasks, including their associated data centers, of: (1) A Reliability Coordinator, (2) a Balancing Authority, (3) a Transmission Operator for transmission Facilities at two or more locations, or (4) a Generator Operator for generation Facilities at two or more locations.

NOPR

138. The Commission sought comment on the meaning of the phrase ''generation Facilities at two or more locations'' and, specifically, whether the phrase includes two or more units at

[160] Encari Comments at 4.

[161] KCP&L Comments at 5.

[162] *Id.*

[163] Tacoma Power Comments at 3–4.

[164] NERC Comments at 29.

[165] SANS defines a zero-day attack as a computer threat that tries to exploit computer application vulnerabilities that are unknown to others or undisclosed to the software developer.

[166] *See* NOPR, 143 FERC ¶ 61,055 at n.69 (referencing Department of Homeland Security Industrial Control Systems Cyber Emergency Response Team (ICS–CERT) Monthly Monitor (October–December 2012) at 1. *Available at http://ics-cert.us-cert.gov/pdf/ICS-CERT_Monthly_Monitor_OctDec2012.pdf.* The October–December 2012 ICS-CERT Monthly Monitor describes two recent situations where malware was introduced into two electric generation industrial control systems (ICS) through removable media (i.e., USB drive) that was being used to back-up a control system environment and updates.).

one generation plant and/or two or more geographically dispersed units.

Comments

139. Commenters generally explain that the phrase ''generation Facilities at two or more locations'' is intended to capture control centers that control two or more geographically dispersed generation units.[167] NERC and other commenters state that the definition is not intended to capture assets associated with two or more units at one generation plant.[168] Portland opines that an interpretation of the phrase that captures multiple generating units at the same generating plant ''could have the unintended consequence of making what are clearly control rooms into control centers.'' [169]

140. Ameren states that although it understands the term to refer to two or more geographically dispersed units, it would support asking NERC to more clearly define the term.[170] Waterfall advocates for a risk-based definition of control center, noting that the risk control centers pose to the bulk electric system is based on sabotage or mis-operation. According to Waterfall, any set of equipment capable of nearly-simultaneously sabotaging a large amount of generating capacity should be classified as a control center no matter where the generation is located.[171]

Commission Determination

141. We approve the definition of Control Center. Consistent with the comments, we clarify that the phrase ''generation Facilities at two or more locations'' refers to control centers that control two or more geographically dispersed generation units as opposed to assets associated with two or more units at one generation plant. In response to the comments raised by Ameren and Waterfall, we find that definition of Control Center is sufficiently clear. However, entities may seek additional clarification or modification through the NERC standards development process. We also find that the CIP version 5 Reliability Standards take a risk-based approach to Control Centers because, under Reliability Standard CIP–002–5, responsible entities must categorize generation operator Control Centers as High, Medium, or Low Impact based on facility ratings.

3. Definition—Cyber Asset

NERC Petition

142. NERC's currently-effective Glossary definition of Cyber Asset provides:

> Programmable electronic devices and communication networks including hardware, software, and data.

NERC proposes the following definition of a Cyber Asset:

> Programmable electronic devices, including the hardware, software, and data in those devices.

Thus, NERC's proposed definition of Cyber Asset removes the phrase ''communication networks.''

NOPR

143. The Commission stated in the NOPR that NERC's proposed definition of Cyber Asset removes the phrase ''communication networks'' from the currently-effective Glossary definition of Cyber Asset, highlighting the fact that the FPA defines ''cybersecurity incident'' as follows:

> A malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those *programmable electronic devices and communication networks, including hardware, software and data* that are essential to the reliable operation of the bulk power system.[172]

144. The NOPR indicated that NERC's revised definition of Cyber Asset appears to remove a type of asset the statute defines as essential to the reliable operation of the Bulk-Power System.[173]

145. In the NOPR, the Commission sought comment regarding the purpose and intended effect of removing ''communication networks'' from the definition of a Cyber Asset.[174] Further, the Commission sought comment on whether the removal of ''communication networks'' from the definition could create a gap in cyber security and the CIP Reliability Standards.[175] In addition, the Commission sought an explanation as to the purpose and intended effect of the phrase ''data in those devices'' and, in particular, whether the phrase excludes data being transferred between devices.[176]

Comments

146. Most commenters support NERC's proposal that removes the phrase ''communication networks'' from the definition of Cyber Asset.[177] NERC and other commenters contend that the inclusion of communication networks in the currently-effective definition of Cyber Asset has caused confusion in the implementation of the CIP Reliability Standards since communication networks are generally outside the control of responsible entities.[178] NERC, KCP&L, MidAmerican, and Tampa comment that communication networks include programmable electronic device components that could still qualify as Cyber Assets, even though the nonprogrammable electronic components of the communication networks, such as cabling, would not qualify.[179] NAGF argues that, although it may be appropriate to address the physical protection of communication cabling in the future, ''the remainder of the NERC CIP standards, as currently drafted, cannot be applied to communication cabling.'' [180]

147. Other commenters claim that removing ''communication networks'' from the definition of Cyber Asset could create security gaps.[181] SPP RE comments that removing communication networks is inconsistent with the Commission's interpretation of CIP–006–3, Requirement R1.1, which requires the protection of data being transmitted over physical media by either physical or logical means.[182] Idaho Power agrees with the NOPR that excluding communication networks from the Cyber Asset definition could lead to a gap in security; however Idaho Power is concerned about how the CIP version 5 Standards would apply to every component of a communication network.[183] Idaho Power notes that the term ''communication network'' itself is open to interpretation and creates confusion as to what assets are covered by the CIP Reliability Standards. Therefore, Idaho Power suggests that the Commission direct NERC to define ''communication network'' through the standard drafting process and direct

[167] Ameren, Dominion, EEI, Idaho Power, KCP&L, Luminant, MidAmerican, NERC, NAGF, Portland, SPP RE, Tampa, TVA.

[168] Dominion Comments at 14; Idaho Power at 4; MidAmerican Comments at 18; NERC Comments at 30; SPP RE Comments at 10; Tampa Comments at 7.

[169] Portland Comments at 5. *See also* TVA Comments at 6.

[170] Ameren Comments at 17–18.

[171] Waterfall Comments at 7.

[172] NOPR, 143 FERC ¶ 61,055 at P 81 (citing 16 U.S.C. 824o(a)(8) (2012) (emphasis added)).

[173] NOPR, 143 FERC ¶ 61,055 at P 81.

[174] *Id.* P 82.

[175] *Id.*

[176] *Id.*

[177] Ameren, AEP, BPA, Dominion, ISO New England, KCP&L, MidAmerican, MISO, NERC, EEI, Exelon, NAGF, National Grid, NextEra, NorthWestern, Portland, PPL Companies, Tacoma, Tampa, UI, and Wisconsin.

[178] AEP Comments at 6–7; KCP&L Comments at 5; MISO Comments at 7–8; NERC Comments at 31–32; Portland Comments at 5–6.

[179] KCP&L Comments at 5; MidAmerican at 19; NERC Comments at 31–32; Tampa Comments at 8.

[180] NAGF Comments at 6.

[181] Idaho Power, SPP RE.

[182] SPP RE Comments at 11.

[183] Idaho Power Comments at 4.

NERC to more fully explain how the CIP version 5 Standards would apply to communication networks.[184]

Commission Determination

148. We approve NERC's revised Cyber Asset definition. After considering the explanations provided by commenters, we are persuaded that it is not necessary to maintain the phrase ''communications network'' within the text of the Cyber Asset definition to ensure that the programmable electronic components of these networks receive protection under the CIP Reliability Standards. We further recognize that maintaining the phrase ''communication networks'' within the Cyber Asset definition would likely cause confusion and possibly complicate the implementation of the CIP version 5 Standards, as many communication network components, such as cabling, cannot strictly comply with the CIP Reliability Standards. We anticipate that the removal of this phrase from the Cyber Asset definition will minimize the number of technical feasibility exceptions needed for strict compliance with the CIP version 5 Standards.

149. Nevertheless, we remain concerned that a gap in protection may exist, as the CIP version 5 Standards do not address security controls needed to protect the nonprogrammable components of communications networks. We observe that a number of other information security standards, including NIST SP 800–53 and ISO 27001, address the protection of communication mediums, for instance in NIST SP 800–53 Rev 3, security control PE–4 includes examples of protecting communication medium including: (i) Locked wiring closets; (ii) disconnected or locked spare jacks; and/or (iii) protection of cabling by conduit or cable trays.[185] Similarly, ISO 27001 also emphasizes the protection of telecommunications cabling from interception or damage in control A.9.2.3.[186]

150. We direct NERC to create a definition of communication networks and to develop new or modified Reliability Standards to address the reliability gap discussed above. The definition of communications networks should define what equipment and components should be protected, in light of the statutory inclusion of communication networks for the reliable operation of the Bulk-Power System. The new or modified Reliability Standards should require appropriate and reasonable controls to protect the nonprogrammable aspects of communication networks. The Commission directs NERC to submit these modifications for Commission approval within one year from the effective date of this final rule. We also direct Commission staff to include this issue in the staff-led technical conference discussed herein.[187]

4. Reliability Tasks

NERC Petition

151. NERC's definitions of the terms BES Cyber System, Control Center, and Reportable Cyber Security Incident include the undefined term ''reliability tasks.'' For example, the proposed definition of BES Cyber System provides:

> One or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.

NOPR

152. The Commission raised the concern in the NOPR whether the use of the undefined term ''reliability tasks'' will lead to confusion during implementation. Therefore, the Commission sought comment on the meaning and scope of the phrase ''reliability tasks'' and whether there is a common understanding of this phrase to assure accurate and consistent implementation of the definitions and, hence, the CIP version 5 Standards.[188]

Comments

153. Most commenters state that ''reliability tasks'' has a well-understood meaning and does not need further definition.[189] NERC, EEI, NAGF and other commenters explain that ''reliability tasks'' refers to the tasks associated with the functions defined in the NERC Functional Model.[190] NERC asserts that the use of the undefined term ''should not cause confusion in implementation or result in interpretation requests'' since industry has a common understanding of the term ''reliability tasks.''[191] SPP RE and UI explain their understanding of the term ''reliability tasks'' as referring to the bulk electric system reliability operating services listed in the Guidelines and Technical Basis section of CIP–002–5.[192]

154. Other commenters advocate for defining the phrase ''reliability tasks'' either because there is no commonly understood meaning or to clarify that the term refers to tasks associated with functions listed in the NERC Functional Model.[193] Ameren suggests that a definition of the term ''reliability tasks'' reference the CIP–002–5 guidance document to provide more clarity.[194] MISO states that the term ''reliability tasks'' should be defined in order to avoid ambiguity and to ensure consistent interpretation in enforcement proceedings.[195]

Commission Determination

155. We are satisfied that responsible entities have a common understanding of ''reliability tasks'' in the NERC definitions and, thus, we conclude that there is no need to direct NERC to define the phrase. Consistent with the comments of NERC and others, we understand that ''reliability tasks'' refers to the tasks associated with the functions defined in the NERC Functional Model.

156. While some commenters suggest that the phrase ''reliability tasks'' is best understood as referring to the bulk electric system reliability operating services listed in the Guidelines and Technical Basis section of CIP–002–5, we believe that the NERC Functional Model is the basis for the phrase ''reliability task'' while the Guidelines and Technical Basis section provides clarity on how the term applies to the CIP version 5 Standards.

5. Intermediate Devices

NERC Petition

157. NERC proposes to define Electronic Access Control or Monitoring Systems (EACMS) and Interactive Remote Access as follows:

> *EACMS*—Cyber Assets that perform electronic access control or electronic access monitoring of the Electronic Security Perimeter(s) or BES Cyber Systems. This includes Intermediate Devices.
>
> *Interactive Remote Access*—[. . .] Remote access originates from a Cyber Asset that is not an Intermediate Device and not located within any of the Responsible Entity's Electronic Security Perimeter(s) or at a defined Electronic Access Point (EAP). [. . .]

[184] *Id.* at 5.

[185] *See* NIST SP 800–53 Revision 3, security control family Physical and Environmental Protection, Annex 2, page 54.

[186] BSI ISO/IEC (2005). *Information technology—Security techniques—Information security management systems—Requirements (ISO/IEC 27001:2005).*British Standards Institute.

[187] *See infra* P 223.

[188] NOPR, 143 FERC ¶ 61,055 at P 84.

[189] AEP, CenterPoint, Dominion, EEI, Exelon, Luminant, NERC, NAGF, National Grid, NextEra, NorthWestern, PPL Companies, SPP RE, Tampa, and Wisconsin.

[190] AEP Comments at 8; Dominion Comments at 12; EEI Comments at 29; NAGF Comments at 7; NERC Comments at 33–34; Tampa Comments at 8.

[191] NERC Comments at 34.

[192] SPP RE Comments at 11, UI Comments at 10.

[193] Ameren, Idaho Power, KCP&L, and MISO.

[194] Ameren Comments at 18.

[195] MISO Comments at 8.

Both proposed definitions include the undefined term ''Intermediate Device.''

NOPR

158. The Commission explained in the NOPR that the term ''Intermediate Systems'' was originally referred to as ''Intermediate Device'' in previous draft versions of the CIP version 5 Standards. The Commission raised the concern that this inconsistency may lead to confusion in the application of the CIP version 5 Standards.[196] Therefore, the NOPR sought comment on whether the defined term ''Intermediate Systems'' is the appropriate reference in the definitions of Electronic Access Control or Monitoring Systems (EACMS) and Interactive Remote Access, as opposed to the undefined term ''intermediate devices.'' [197]

Comments

159. NERC clarifies that ''Intermediate Systems'' is the appropriate term in the definitions of EACMS and Interactive Remote Access and states that it will submit an errata change to correct the oversight.[198]

160. In a September 30, 2013 errata filing in this proceeding (docket RM13–5–000), NERC proposes to replace the undefined term ''Intermediate Device'' with the defined term ''Intermediate System'' in the definitions of EACMS and Interactive Remote Access.

Commission Determination

161. The Commission approves the definitions of EACMS and Interactive Remote Access, with the term Intermediate System, as proposed in NERC's September 30, 2013 errata.

D. Implementation Plan

NERC Petition

162. NERC proposes an implementation plan for the CIP version 5 Standards that addresses two distinct issues. First, NERC proposes language that would provide a transition from CIP version 3 to CIP version 5, thereby bypassing implementation of CIP version 4:

> Notwithstanding any order to the contrary, CIP–002–4 through CIP–009–4 do not become effective, and CIP–002–3 through CIP–009–3 remain in effect and are not retired until the effective date of the Version 5 CIP Cyber Security Standards under this implementation plan.

NERC explains that the language is intended to alleviate uncertainty resulting from ''industry stakeholders not knowing whether the Commission will act on CIP Version 5 prior to the CIP Version 4 effective date, April 1, 2014. . . .'' [199]

163. Second, NERC proposes a 24-month implementation period for ''High Impact'' and ''Medium Impact'' BES Cyber Systems, and a 36-month implementation period for ''Low Impact'' BES Cyber Systems.

NOPR

164. In the NOPR, the Commission proposed to approve the implementation plan for the CIP version 5 Standards to allow responsible entities to transition from compliance with the currently-effective CIP version 3 Standards to compliance with the CIP version 5 Standards, essentially retiring the CIP version 4 Standards prior to mandatory compliance.[200] Thus, upon Commission approval in a Final Rule, the CIP version 5 Standards would supersede Reliability Standards CIP–002–4 through CIP–009–4, and CIP–002–3 through CIP–009–3 would remain in effect and would not be retired until the effective date of the CIP version 5 Standards.

165. With regard to the proposed implementation periods, the Commission sought in the NOPR comment on the activities and any other considerations that justify 24-month and 36-month implementation periods for the CIP version 5 Standards.[201] In addition, the Commission sought comment on whether responsible entities can achieve compliance with the CIP version 5 Standards in a shorter period for those Cyber Assets that responsible entities have identified to comply with the currently-effective CIP Reliability Standards.[202] Finally, the NOPR sought comment on the feasibility of a shorter implementation period and the reasonable time frame for a shorter implementation period.[203]

Comments

166. While the majority of commenters support NERC's implementation plan as-filed, other commenters either request additional time to implement CIP version 5 or request flexibility to transition to CIP version 5 prior to the proposed effective date.

167. The majority of comments support approval of NERC's implementation plan as-filed.[204] NERC comments that bypassing CIP version 4 will allow entities to devote the necessary resources and attention to implement the improved cyber security controls in CIP version 5. NERC, APPA, CenterPoint, and EEI, among others, identify activities that responsible entities are expected to undertake during the proposed 24- and 36-month implementation periods, including re-evaluating cyber assets and systems based on the new criteria, budget for and acquire resources required to implement the new controls, implement the new requirements and then assess implementation of each requirement for compliance.[205]

168. In response to the Commission's concerns about the implementation periods, APPA, Dominion and SWP assert that the 24- and 36-month implementation periods are reasonable, and provide time for entities to budget and acquire the necessary resources to comply with CIP version 5.[206] LADWP cautions that, because vendors of specialized security equipment can require significant lead times and skilled contractors may not be able to implement upgrades within a short period of time, the proposed 24- and 36-month implementation periods are appropriate and necessary.[207]

169. SCE&G contends that the proposed 24-month implementation period for High and Medium Impact assets ''is aggressive and likely insufficient.'' [208] SCE&G proposes that the Commission extend the implementation period for Medium and High Impact assets to 36-months. FirstEnergy supports the proposed implementation plan and notes that the implementation periods ''represent an ambitious, but reasonable, industry-vetted goal to achieve compliance with what is essentially a new cyber security framework.'' [209] Therefore, FirstEnergy asks the Commission to clarify that it will accept, on a case-by-case basis,

[196] NOPR, 143 FERC ¶ 61,055 at P 85.

[197] *Id.* P 86.

[198] NERC Comments at 35.

[199] NERC Petition at 43.

[200] NOPR, 143 FERC ¶ 61,055 at P 89.

[201] *Id.* P 90.

[202] *Id.*

[203] *Id.; see generally Version 5 Critical Infrastructure Protection Reliability Standards, et al.,* 144 FERC ¶ 61,123 (2013) (granting a six-month extension of the compliance deadline for the CIP version 4 Reliability Standards to facilitate the transition from the CIP version 3 Reliability Standards to the CIP version 5 Reliability Standards).

[204] E.g., Ameren, AEP, APPA, CenterPoint, Consumers Energy, Dominion, EPSA, G&T Cooperatives, Holland, ITC, ISO New England, KCP&L, LADPW, Luminant, MidAmerican, MISO, NASUCA, National Grid, NERC, NAGF, Northeast Utilities, PPL Companies, SCE, SWP, Southern Indiana, Tampa, TVA, UI, and Xcel.

[205] APPA Comments at 19; CenterPoint Comments at 7; EEI Comments at 17–19; LADWP Comments at 15; NRECA Comments at 10; NERC Comments at 37–39; PHI Comments at 2–3; Tampa Comments at 11–12; UI Comments at 3–4.

[206] APPA Comments at 17–19; Dominion Comments at 5–6; SWP Comments at 6.

[207] LADWP Comments at 15.

[208] SCE&G Comments at 6.

[209] FirstEnergy Comments at 4.

requests for time extensions to comply with the CIP version 5 Standards when presented with extraordinary circumstances.

170. NRECA and SPP Parties support the proposed 24- and 36-month implementation periods, but suggest that the Commission should permit responsible entities to shift to compliance with the CIP version 5 Standards prior to the effective date.[210] In addition, SPP Parties notes that there is little guidance for entities to transition between the different versions of the CIP Standards and, therefore, entities should not be penalized for maintaining compliance with the prior version of the CIP Standards as they transition to the new version of the standards. Finally, NERC indicates that it plans to develop transition guidance documents and a pilot program to assist responsible entities as they move from compliance with the CIP version 3 Standards to the CIP version 5 Standards.[211]

Commission Determination

171. The Commission adopts the NOPR proposal to approve the implementation plan for the CIP version 5 Standards as proposed by NERC. Therefore, CIP–002–4 through CIP–009–4 will not become effective, and CIP–002–3 through CIP–009–3 will remain in effect until the effective date of the CIP version 5 Standards. In addition, we are persuaded by the majority of commenters that the 24-month implementation period for High and Medium Impact BES Cyber Systems and the 36-month implementation period for Low Impact BES Cyber Systems are reasonable. Commenters cite several potentially resource-intensive tasks, including the hiring and training of new personnel, and activities specific to newly affected BES Cyber Systems, as justification for the 24 and 36-month implementation periods.

172. The Commission also supports NERC's proposal to develop transition guidance documents and a pilot program to assist responsible entities as they move from compliance with the CIP version 3 Standards to the CIP version 5 Standards.[212] The Commission agrees that a pilot program will assist responsible entities by offering best practices and lessons learned during this transition.

173. In response to SCE&G, we decline to extend the proposed 24-month implementation period for Medium and High Impact assets. The overwhelming majority of commenters, including NERC, indicate that the proposed implementation periods are reasonable based on the investments and activities required to implement the CIP version 5 Standards. To the extent that extraordinary circumstances may hinder timely compliance, we suggest that responsible entities work with their relevant compliance enforcement authority and NERC to address implementation issues.

174. Similarly, in response to NRECA and SPP Parties, we are not persuaded that there is a need to entertain requests to shift to compliance with the CIP version 5 Standards prior to the effective date of the standards. As NERC notes, the implementation periods and associated pilot program are required, in part, to ''allow the Regional Entities and NERC to make adjustments in their systems and approach to compliance with proposed CIP Version 5 while obtaining experience with entities in transition.'' [213] Issues of early compliance can be addressed by NERC and Regional Entities as appropriate.

E. Violation Risk Factor/Violation Severity Level Assignments

175. NERC requests approval of the Violation Risk Factors (VRF) and Violation Severity Levels (VSL) assigned to the CIP version 5 Standards. In particular, NERC requests approval of 32 VRFs, one set for each requirement in the proposed CIP version 5 Standards.

176. We approve 30 VRFs and direct NERC to modify the VRF for CIP–006–5, Requirement R3 from Lower to Medium and CIP–004–5, Requirement R4 from Lower to Medium. In addition, we direct NERC to modify the VSLs for the CIP version 5 Standards, as discussed below.

1. Lower VRF for Maintenance and Testing of Physical Access Control Systems

NERC Petition

177. NERC assigns a Lower VRF to Reliability Standard CIP–006–5, Requirement R3, which addresses the maintenance and testing of Physical Access Control Systems.

NOPR

178. In the NOPR, the Commission stated that the NERC mapping document comparing the CIP version 4 and CIP version 5 Standards identifies Reliability Standard CIP–006–4, Requirement R8, which addresses the maintenance and testing of all physical security mechanisms, as the comparable Requirement in the CIP version 4 Standards.[214] Reliability Standard CIP–006–4, Requirement R8 is assigned a VRF of Medium. The NOPR stated that the Commission's VRF guidelines require, among other things, consistency within a Reliability Standard (guideline 2) and consistency between requirements that have similar reliability objectives (guideline 3).[215] The Commission stated that the petition does not explain the change from a Medium VRF to a Lower VRF for a comparable requirement. The Commission proposed to direct NERC to modify the VRF assigned to CIP–006–5, Requirement R3 from Lower to Medium, consistent with the treatment of the comparable requirement in the CIP version 4 Standards, within 90 days of the effective date of a final rule in this proceeding.

Comments

179. NERC and MISO argue that the Lower VRF for Reliability Standard CIP–006–5, Requirement R3 appropriately reflects the reduced reliability risk in Requirement R3 as compared to CIP–006–4, Requirement R8.[216] NERC states that Requirement R8 requires ''[t]esting and maintenance period of all physical security mechanisms on a cycle no longer than three years.'' NERC states that CIP–006–5 now requires maintenance and testing ''at least once every 24 calendar months.'' NERC asserts that, because maintenance and testing of Physical Access Control Systems will occur more frequently pursuant to the CIP version 5 Standards, the reliability risk is reduced and a Lower VRF is appropriate.

180. Most commenters do not support modifying the VRF proposed by NERC.[217] Commenters state that that the VRF for Requirement R3 should be Lower because Requirement R3 is unlikely to pose a direct threat to reliability if violated. BPA supports the Lower VRF for Requirement R3 because, although ''testing and maintenance is an

[210] NRECA Comments at 10–11, SPP Parties Comments at 4.

[211] *See* NERC Comments at 39–40.

[212] *See* NERC Comments at 39–40.

[213] NERC Comments at 40.

[214] Mapping Document Showing Translation of CIP–002–4 to CIP–009–4 into CIP–002–5 to CIP–009–5, CIP–010–1, and CIP–011–1. Page 20–21. Accessible from: *http://www.nerc.com/docs/standards/sar/Mapping_Document_012913.pdf.*

[215] *See N. Amer. Elec. Reliability Corp.,* 119 FERC ¶ 61,145, *order on reh'g and compliance filing,* 120 FERC ¶ 61,145, at PP 8–13 (2007) (VRF Order). The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) Consistency within a Reliability Standard; (3) Consistency among Reliability Standards; (4) Consistency with NERC's Definition of the Violation Risk Factor Level; and (5) Treatment of Requirements that Co-mingle More Than One Obligation.

[216] NERC Comments at 41–42; MISO Comments at 10.

[217] BPA, Idaho Power, KCP&L, MISO, and NERC.

important task, failure to test any single component will have minimal impact of the overall performance of the Physical Access Control System and the BES.'' [218] However, AEP states that the modification proposed in the NOPR ''ensure[s] consistency within a Reliability Standard and consistency between requirements that have similar reliability objectives.'' [219]

Commission Determination

181. We adopt the NOPR proposal and direct NERC to modify the VRF assignment for CIP–006–5, Requirement R3 from Lower to Medium. This modification will ensure that the CIP version 5 Standards afford similar treatment to the testing and monitoring of Physical Access Control Systems (PACS) as the CIP version 4 Standards. We are not persuaded by commenters' arguments that a Lower VRF assignment is appropriate for CIP–006–5, Requirement R3.

182. First, we do not agree that the shortening of the review cycle from three years to two years warrants changing the VRF categorization to Lower as suggested by NERC and MISO. A medium risk requirement is defined as a requirement that, if violated, could directly affect the electrical state or the capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system.[220] Physical Access Control Systems are used to support the effective monitoring and control of the Bulk-Power System facilities through the use of cameras, alarms, and other control mechanisms. We are not convinced that shortening the required review period from three years to two years ameliorates the potential impact of a violation of this requirement to justify a Lower VRF. A failure to monitor or limit unauthorized access to critical plant equipment or facilities due to an inoperable Physical Access Control System could result in tampering, sabotage, or the unauthorized alteration of equipment associated with High or Medium Impact BES Cyber Systems.

183. In addition, we disagree with BPA's assertion that CIP–006–5, Requirement R3 is administrative in nature and will have a minimal impact on the overall performance of Physical Access Control Systems. As described above, the CIP–006–5, Requirement R3 control is a technical control that sets the minimum expectations for maintenance and testing of Physical Access Control Systems at bulk electric system facilities. Thus, we find that a Medium VRF designation is appropriate for CIP–006–5, Requirement R3.

184. Consistent with our discussion above, the Commission directs NERC to modify the VRF assignment for CIP–006–5, Requirement R3 from Lower to Medium, within 90 days of the effective date of this Final Rule.

2. Lower VRF for Access Authorizations

NERC Petition

185. NERC assigns a VRF Factor to proposed CIP–004–5, Requirement R4, which relates to access management programs addressing electronic access, unescorted physical access, and access to BES Cyber System Information. Requirement R4 obligates a responsible entity to have a process for authorizing access to BES Cyber System Information, including periodic verification that users and accounts are authorized and necessary.

NOPR

186. The Commission stated in the NOPR that Recommendation 40 of the U.S.-Canada Power System Blackout Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (Blackout Report) states that access to operationally sensitive computer equipment should be ''strictly limited to employees or contractors who utilize said equipment as part of their job responsibilities.'' [221] In addition, the NOPR stated that Recommendation 44 of the Blackout Report states that entities should ''develop procedures to prevent or mitigate inappropriate disclosure of information.'' [222] The NOPR stated that these two Blackout Report recommendations relate to the protection of critical bulk electric system equipment and information, and we believe these recommendations support assigning access management programs, such as those required under CIP–004–5, Requirement R4, a Medium VRF. The NOPR stated that the Commission's VRF guidelines require, among other things, consistency with the conclusions of the Blackout Report (guideline 1).

187. The NOPR stated that NERC proposes to assign a Medium VRF to CIP–004–5, Requirement R5, which addresses access revocation. The NOPR stated that this proposed assignment results in a potential inconsistency between VRFs within CIP–004–5. The NOPR stated that Guideline 2 of the Commission's VRF guidelines requires consistency within a Reliability Standard. The NOPR stated that access authorization, addressed in CIP–004–5, Requirement R4, is the companion to access revocation, addressed in CIP–004–5, Requirement R5. The NOPR stated that this relationship is demonstrated by the history of the CIP Reliability Standards; in the CIP version 1 through 4 Standards, access authorization and access revocation are two sub-requirements of a main requirement addressing the maintenance of a list of persons with authorized cyber or authorized unescorted physical access.[223] The NOPR stated that the petition does not explain the potential inconsistency between VRFs in CIP–004–5.

188. The NOPR proposed to modify the VRF assigned to CIP–004–5, Requirement R4 from Lower to Medium, consistent with the Blackout Report and to ensure consistency between VRFs within CIP–004–5, within 90 days of the effective date of a final rule in this proceeding. The NOPR sought comment on the proposal.

Comments

189. NERC states that the Commission should not direct a modification to the VRF for CIP–004–5, Requirement R4. NERC explains that, in developing the VRF for Requirement R4, the drafting team adopted the Lower VRF used in CIP–003–4, Requirement R5, which is the comparable requirement from the CIP version 4 Standards, to provide for consistency. NERC explains further that the standard drafting team concluded that, because Requirement R4 is largely administrative and violations of the requirements do not pose a significant risk to the Bulk Electric System, a Lower

[218] BPA Comment at 9.

[219] AEP Comments at 8.

[220] *See* Violation Risk Factors, accessible from: *http://www.nerc.com/files/violation_risk_factors.pdf.*

[221] *See* U.S.-Canada Power System Blackout Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Blackout Report) at 167. The Blackout Report is *available at https://reports.energy.gov/BlackoutFinal-Web.pdf.*

[222] *See id.* p. 169.

[223] *E.g.,* Reliability Standard CIP–004–4a, Requirement R4 states:

R4. Access—The Responsible Entity shall maintain list(s) of personnel with authorized cyber or authorized unescorted physical access to Critical Cyber Assets, including their specific electronic and physical access rights to Critical Cyber Assets.

R4.1. The Responsible Entity shall review the list(s) of its personnel who have such access to Critical Cyber Assets quarterly, and update the list(s) within seven calendar days of any change of personnel with such access to Critical Cyber Assets, or any change in the access rights of such personnel. The Responsible Entity shall ensure access list(s) for contractors and service vendors are properly maintained.

R4.2. The Responsible Entity shall revoke such access to Critical Cyber Assets within 24 hours for personnel terminated for cause and within seven calendar days for personnel who no longer require such access to Critical Cyber Assets.

VRF was still appropriate. NERC states, by contrast, that the drafting team concluded that a Medium VRF was appropriate for CIP–004–5, Requirement R5 to reflect the greater risk to the bulk electric system in the event of a failure to revoke access. Finally, NERC notes that the standard drafting team determined that failure to revoke access following termination of an employee presents a greater risk to reliability and thus a Medium VRF was appropriate for access revocation.

190. Most comments do not support modifying the VRF proposed by NERC.[224] BPA supports the Lower VRF for CIP–004–5, Requirement R4, because Requirement R4 ''concerns only documentation of risk assessment programs and regular performance of background checks.'' [225] Ameren concurs that CIP–004–5, Requirement R4 is ''an administrative documentation requirement [that] does not warrant this heightened level of protection.'' [226] In addition, Ameren and BPA question the Commission's position that the Blackout Report supports modifying the VRF associated with Requirement R4.[227] Idaho Power opines that a failure to maintain an administrative requirement does not necessarily expose the bulk electric system to a significant risk.[228] MISO, for its part, states that ''it is unlikely that violations of [Requirement R4] would pose a direct threat to the reliability of the BES.'' [229]

191. SPP RE states that it supports the NOPR's proposed modification because ''[a]ccess control, both physical and electronic, is a cornerstone to protecting Cyber Assets from unauthorized access. While failure to revoke access is generally considered a greater risk, not properly authorizing access also poses a moderate risk.'' [230] AEP supports the NOPR's proposed modification to the VRF for Requirement R4 for the same reason that it supports raising the VRF for Reliability Standard CIP–006–5, Requirement R3; specifically, to ''ensure consistency within a Reliability Standard and consistency between requirements that have similar reliability objectives.'' [231]

Commission Determination

192. The Commission adopts the NOPR proposal and directs NERC to modify the VRF assignment for CIP–004–5, Requirement R4 from Lower to Medium. This modification is necessary to reflect that access to operationally sensitive computer equipment should be strictly limited to employees or contractors who utilize the equipment in performance of their job responsibilities, and to prevent or mitigate disclosure of sensitive information consistent with Recommendations 40 and 44 of the 2003 Blackout Report. In addition, a Medium VRF assignment ensures consistency with the Commission's VRF guidelines.

193. We disagree with NERC's contention that the risk posed by a violation of CIP–004–5, Requirement R5, which addresses authorization of physical and electronic access, is minor in comparison to a violation of CIP–004–5, Requirement R5, which addresses access revocation. NERC fails to address the concerns raised in the NOPR concerning the inconsistency between the proposed VRF assignments for CIP–004–5, Requirement R4 and Requirement R5 or explain why we should ignore the Commission's VRF guidelines.

194. We do not agree with NERC, Ameren, and Idaho Power's contention that Requirement R4 warrants a Lower VRF categorization because it is administrative in nature. While CIP–004–5, Requirement R4 mandates that entities must document access and maintain access lists, the underlying control itself is technical in nature because the documented access privileges must be implemented appropriately on the protected devices and in the affected facilities in order to comply with the standard. With respect to Ameren and BPA's comments, the Blackout Report recommendations were intended to address the risks posed by individual grants of access through the use of policies, as the task force specifically recommended that entities develop policies and procedures to control access ensuring that (1) access is *strictly* limited to employees or contractors who utilize said equipment as part of their job responsibilities and (2) access of other staff are *strictly* controlled via escort and monitored.[232]

195. We agree with SPP RE that the CIP–004–5, Requirement R4 access authorization process is intended to serve as a preventive control that ensures access is granted on a need to have basis with only the permissions required for job performance. We also agree that the periodic review of access authorizations is a companion detective control that is designed to ensure authorized access is still required, and there have been no errors in the granting or revocation of access. When considered in context with the fact that CIP–004–5, Requirement R5 is assigned a Medium VRF, we conclude that a Medium VRF assignment is appropriate for CIP–004–5, Requirement R4.

196. Consistent with the discussion above, we direct NERC to modify the VRF assignment for CIP–004–5, Requirement R4 from Lower to Medium, within 90 days of the effective date of this Final Rule.

3. Violation Severity Levels

NERC Petition

197. NERC requests approval for 32 sets of VSLs—one set for each requirement in the CIP version 5 Standards.[233]

NOPR

198. In the NOPR, the Commission proposed to direct that NERC file a modified version of the VSLs due to inconsistencies with previous Commission orders and typographical errors in the content of the VSLs. The Commission stated that certain VSLs for the CIP version 5 Standards are inconsistent with Commission guidance.[234] The NOPR stated, for example, that Reliability Standard CIP–007–5, Requirement R4.4 requires entities to ''review a summation or sampling of logged events . . . at no greater than 15 days.'' The NOPR stated that the High VSL gradation for Requirement R4.4 provides that an entity must miss ''two or more intervals'' for the violation to reach High severity over the specified time period. In addition, the NOPR stated that CIP–003–5, Requirement R4 provides the framework for a CIP Senior Manager to delegate authorities and that the proposed VSL is based upon the number of incorrect delegations. The NOPR stated that the Commission has previously indicated that VSL assignments are to be based on ''a single violation of a Reliability Standard, and not based on a cumulative number of occasions of the same requirements over a period of time.'' [235] The NOPR stated that these are two examples of proposed VSL assignments that are inconsistent

[224] Ameren, BPA, Idaho Power, KCP&L, MISO, and NERC.

[225] BPA Comments at 9.

[226] Ameren Comments at 13.

[227] *Id.*

[228] Idaho Power Comments at 7.

[229] MISO Comments at 10.

[230] SPP RE Comments at 12.

[231] AEP Comments at 8.

[232] *See* U.S.—Canada Power System Blackout Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Blackout Report) at 167. The Blackout Report is *available at https://reports.energy.gov/BlackoutFinal-Web.pdf.*

[233] NERC Petition at 2.

[234] *N. Amer. Elec. Reliability Corp.,* 123 FERC ¶ 61,284 (Violation Severity Level Order), *order on reh'g,* 125 FERC ¶ 61,212 (2008).

[235] Violation Severity Level Order, 123 FERC ¶ 61,284 at PP 35–36.

with the Commission's VSL guidelines.[236]

199. The NOPR stated that certain VSLs are unclear or contain typographical errors. The NOPR stated, as an example, that in the proposed VSL for CIP–004–5, Requirement R4.2, the Moderate and High gradations are identical.[237] The NOPR stated that the typographical errors could create confusion and potentially hinder both compliance with and enforcement of the CIP Reliability Standards.[238]

200. The NOPR stated that NERC also proposes VSLs that include the terms ''identify,'' ''assess,'' ''correct,'' and ''deficiencies'' for the 16 CIP version 5 ''identify, assess, and correct'' requirements.[239] The NOPR stated that the Commission may direct modifications to the ''identify, assess, and correct'' language based on the comments received. The NOPR stated that if the Commission directs NERC to remove or modify the ''identify, assess, and correct'' language in the requirements, the VSLs may no longer be consistent with VSL Guideline 3, that VSLs use the same terminology as the associated requirement.[240]

201. The NOPR sought comment on the proposal to direct NERC to file a modified version of the VSLs within 90 days of the effective date of a final rule in this proceeding.

Comments

202. NERC states that the proposed VSLs are based on a single violation and that ''the standard drafting team based its VSL assignment on how much time had passed before the responsible entity complied with the requirement, if ever, not the number of violations.'' [241] NERC states that it will submit an errata for the VSLs that were unclear or contained typographical errors.[242]

203. BPA supports the VSLs proposed by NERC, stating that ''basing the VSL on the number of deficiencies is consistent with the concept of the 'identify, assess, and correct' requirement.'' [243] Encari supports removing the ''identify, assess, and correct'' language from the VSLs.

204. Southern Indiana states that it takes no position on the NOPR's proposed modifications to the VSLs. Southern Indiana states that VRFs and VSLs are not dispositive of the level of penalties associated with CIP violations (i.e., there are numerous adjustment factors) and that the Commission should make clear that any penalties for CIP violations should be tailored to each responsible entity's effect on the bulk electric system.

Commission Determination

205. Consistent with the NOPR proposal, we direct NERC to develop modifications to the VSLs for certain CIP version 5 Standard requirements to: (1) remove the ''identify, assess, and correct'' language from the text of the VSLs for the affected requirements; (2) address typographical errors; and (3) clarify certain unexplained elements. For the VSLs that include ''identify, assess, and correct'' language, we direct NERC to ensure that these VSLs are modified to reflect any revisions to the requirement language in response to our directives. We grant NERC the discretion to decide how best to address these modifications be it through an errata filing to this proceeding or separate filing.

206. With respect to the VSL language for CIP–003–5, Requirements R1 and R2, the Commission notes that the language ''as required by R[1 or 2]'' and ''according to Requirement R[1 or 2]'' is redundant and potentially confusing and hereby directs NERC to provide clarification to this language.

207. With respect to the VSL language for CIP–003–5, Requirement R4, the Commission agrees with NERC that basing the VSL language on a timeline is appropriate, but notes that the VSL language does not match the table and analysis documents within Appendix E of the CIP version 5 Petition. After considering NERC's comments, the Commission understands that the correct VSL for this requirement includes timeline gradations. We therefore direct NERC to clarify the VSL language for this requirement to reflect this understanding.

208. We direct NERC to change the VSL gradation for CIP–004–5, Requirement R4 to be percentage based, instead of using the number of BES Cyber Systems or sites for storing BES Cyber System information. This change will allow for fair treatment for entities that may only have a single BES Cyber system or storage location.[244]

209. With respect to the VSL language for CIP–008–5, Requirement R2, the Commission believes that NERC inserted a typographical error into the petition, creating a gap between 18 months and 19 months in the VSLs. We therefore direct NERC to clarify this language in a further filing.

210. With respect to the VSL language in CIP–009–5 Part 3.1, we believe that the number of days listed in the VSLs is inconsistent. For example, the moderate VSL for Part 3.1.2 has a timeframe of 90—210 calendar days, while the High VSL has a timeframe of greater than 120 calendar days. The Commission believes that the 120 day metric is appropriate for these time-based VSL gradations and directs NERC to change the ''210 calendar days'' language to ''120 calendar days'' where appropriate. In short, notwithstanding any changes the Commission requires for VRFs and VSLs, the Commission clarifies that any penalties for violations of the CIP Standards must be tailored to each responsible entity's effect on the BES, with particular consideration given to small utilities that individually pose less of a reliability and security risk.

F. Other Technical Issues

211. In the NOPR, the Commission stated that, ''while we propose to approve the CIP version 5 Standards based upon the improvements to the currently-approved CIP Reliability Standards, we believe that the cyber security protections proposed in the CIP version 5 Standards could be enhanced in certain areas.'' [245] The NOPR sought comment on the issues of communications security, remote access, and differences between the CIP version 5 Standards and NIST. The Commission further stated in the NOPR that, ''depending on the adequacy of the explanations provided in response'' to the NOPR questions, the Commission

[236] The NOPR cited other examples, including the Violation Severity Level assignments for CIP–003–5, Requirement R3, CIP–004–5, Requirement R1, CIP–007–5, Requirement R4, CIP–009–5, Requirement R3.

[237] *See* NERC Petition, Exh. E (Table of VRFs and VSLs Proposed for Approval and Analysis of how VRFs and VSLs Were Determined Using Commission Guidelines), at 21.

[238] The NOPR cited the following Requirements: CIP–003–5, Requirements R1, R2, R3; CIP–007–5, Requirement R5; CIP–008–5, Requirements R2, R3; CIP–009–5, Requirements R2, R3.

[239] The NOPR stated that although NERC proposed 17 Requirements with the ''identify, assess, and correct'' language, the Violation Severity Level assignment for CIP–003–5, Requirement R4 does not refer to the ''identify, assess, and correct'' language.

[240] *See Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards,* Order No. 763, 139 FERC ¶ 61,098, at PP 91, 95 (2012) (citing VSL Guideline 3, the Commission directed NERC to change a Violation Severity Level for Reliability Standard PRC–006–1, Requirement R8 to remove the phrase ''more than 5 calendar days, but'' because the Requirement did not contain a five-day grace period for providing data to planning coordinators that was included in the Violation Severity Level).

[241] NERC Comments at 44.

[242] On September 30, 2013, NERC filed an errata with, *inter alia,* corrections to the VSLs for the CIP version 5 Standards. On October 1, 2013, NERC filed a supplemental errata to correct a formatting error in the September 30 errata.

[243] BPA Comments at 10; KCP&L Comments at 6.

[244] In the September 30 errata, NERC addressed our concern regarding the VSL assignment for CIP–004–5, Requirement R4.

[245] NOPR, 143 FERC ¶ 61,055 at P 105.

may direct NERC to develop modifications to certain aspects of the CIP Reliability Standards or, alternatively, conclude that while no changes are necessary at this time, NERC must consider these issues in preparing the next version of CIP Standards.[246]

1. Communications Security

NOPR

212. In the NOPR, the Commission stated that communications security, which is a basic layer to any defense-in-depth security strategy for typical industrial control systems, involves securing the data being transmitted across a network. The Commission explained that a variety of cryptographic tools, such as encryption, integrity checks, and multi-factor authentication, can enhance a responsible entity's defense-in-depth security strategies.[247] In addition, the NOPR outlined the Commission's concerns regarding the exemption of communication networks from protection based solely on specific types of technology, such as non-routable communication systems. The Commission sought comment on (1) whether the adoption of communications security protections, such as cryptography and protections for non-routable protocol, would improve the CIP Standards and (1) whether the CIP standards adequately protect non-routable communication systems.

Comments

213. EEI, MISO, NAGF and other commenters support the concept of communications security through the use of various forms of cryptography as part of a defense-in-depth cyber security posture, although not necessarily as part of the CIP Reliability Standards.[248] NERC, KCP&L, Tacoma and others express concerns regarding potential adverse effects that mandating cryptography for all BES Cyber Systems might have on Bulk-Power System reliability.[249] NERC, EEI, LAWDP and others comment that the deployment of cryptographic protocols may: (1) Prohibitively increase latency in communications; (2) obfuscate data needed for testing and problem diagnosis; and (3) introduce communication errors from complex key management across organizations. With regard to the exemption of communication networks, most commenters, including NERC, contend that non-routable protocols and devices will be adequately protected under the CIP version 5 Standards.[250]

214. SPP RE, Waterfall, and Venafi comment that protecting communication systems is a critical concept in cyber security and that the use of cryptography under certain circumstances will improve the confidentiality, availability, and integrity of essential data. Thus, they recommend that the Commission require encryption of inter-site communications for communication networks where such protections are readily available and practical.

215. EEI, Dominion, Tacoma Power, TVA, and other commenters indicate that the Commission should refrain from mandating specific technology solutions through mandatory standards, and suggest that cryptography and other emerging technologies should be thoroughly discussed throughout the electric industry. NERC, NAGF, and MISO suggest addressing the NOPR questions on cryptography through a technical conference or other guidance. NERC indicates that a technical conference would provide the appropriate forum to begin discussing the issues associated with communications security and cryptography.

216. With regard to the NOPR concerns regarding the exemption of communication networks from the CIP standards, NERC and other commenters generally agree that additional protections for non-routable protocols and the systems that use them are not needed at this time.[251] NERC explains that the external routable connectivity limitation generally applies to requirements that either require or can take advantage of the high speed connections that are typically associated with routable connectivity. Idaho Power states that non-routable protocols are inherently more secure than routable protocols and states that the CIP Standards provide adequate protection for devices that use non-routable protocols.

2. Remote Access

NOPR

217. ''Remote access'' refers to the ability to access a non-public computer network from external locations. The Commission explained in the NOPR that, while remote access provides greater flexibility in accessing remote computer networks, this flexibility creates new security risks by allowing a potentially unsecured device access into an entity's network. The Commission discussed the complexities and potential vulnerabilities associated with remote access, including the need for an entity to verify that an employee, vendor automated system initiating remote access to the entity's internal networks has the appropriate access permissions.[252] The Commission requested comment on whether the adoption of more stringent controls for remote access would improve the CIP Reliability Standards.

Comments

218. Most commenters assert that the CIP version 5 Standards sufficiently address protections for interactive remote access in CIP–004–5, Requirement R4 and CIP–005–5, Requirement R2.[253] MISO recommends that additional remote access protections beyond those in CIP–005–5, Requirement R2 should be voluntary, due to the differences in entity size and capabilities. EEI and KCP&L assert that remote access issues deserve a thorough discussion and recommendations, not a piecemeal approach.

219. Waterfall comments that remote access mechanisms are among the most serious strategic threats to reliability. Waterfall suggests that, when remote access is needed, unidirectional gateways provide greater security than firewalls and should be mandated by future standards.

3. Differences Between the CIP Version 5 Standards and NIST

NOPR

220. In the NOPR, the Commission expressed concern that the CIP version 5 Standards do not address certain aspects of cyber security in as comprehensive a manner as the NIST Risk Management Framework addresses the same topics. The NOPR provided examples of differences between the CIP version 5 Standards and the NIST Risk Management Framework. Such differences include (1) the absence of certain security controls contained in NIST Special Publication 800–53's Security Control Catalog and associated guidance documents from the CIP version 5 Standards, (2) the failure to address the monitoring of information systems for new threats and vulnerabilities, and (3) comprehensive asset categorization. The Commission sought comment on ''whether, and in

[246] *Id.*

[247] *Id.* P 107.

[248] *See also* Idaho Power; Mid-American; SPP RE; Tampa; Venafi and Waterfall.

[249] *E.g.,* AEP; Idaho Power; PPL and TVA.

[250] *E.g.,* Dominion; Gist; LADWP; NAGF and Tampa.

[251] *See,* e.g., Ameren; Dominion; Idaho Power; LADWP; NAGF and TVA.

[252] NOPR, 143 FERC ¶ 61,055 at PP 110–111.

[253] *See, e.g.,* Ameren; Dominion; KCP&L; Portland; SPP RE; Tacoma and UI.

what way, adoption of certain aspects of the NIST Risk Management Framework could improve the security controls proposed in the CIP version 5 Standards.'' [254]

Comments

221. NERC states that the proposed CIP version 5 Standards generally cover the same subject areas as the NIST Risk Management Framework.[255] NERC adds that the question of whether or how to incorporate additional elements of the NIST Risk Management Framework in the CIP Reliability Standards is a discussion for a technical forum inclusive of industry, NERC, and Commission staff.

222. Several commenters discuss the distinctions between the underlying missions of the CIP Reliability Standards and the NIST Risk Management Framework. For example, Waterfall states that the NIST Risk Management Framework, by and large, focuses on securing the confidentiality of data and protecting information systems, not the industrial control systems underlying the reliability of the bulk electric system. Arkansas comments that the CIP Standards have an advantage over the NIST Risk Management Framework in that they focus on a relatively small number of reliability services that need to be protected as opposed to the NIST mission of establishing general standards for many organizations (all U.S. Federal Agencies) with vastly different missions.

223. Commenters also address differences in the enforcement of the CIP Reliability Standards versus the NIST Risk Management Framework. EEI, ISO–NE., MidAmerican, and Gist state that the NIST Risk Management Framework is a voluntary guidance document that includes control selection, tailoring and scoping of controls to the individual situation, as well as the acceptance of residual risk that FERC has ruled cannot be a part of a mandatory and enforceable Standard. MidAmerican notes further that the CIP version 5 Standards do not allow responsible entities to exercise broad discretion in tailoring their compliance programs and additionally argues that they are generally very prescriptive.

Commission Determination

224. Based on the comments received in response to the NOPR questions, we recognize the broad scope of opinions on the issues of communications security, remote access, and differences between the CIP version 5 Standards and the NIST Risk Management Framework. The NOPR comments indicate a range of views on whether the CIP version 5 Standards adequately address the technical issues discussed in the NOPR, as well as whether and how to address such matters in a future version of the CIP Reliability Standards. Further, we agree with EEI regarding the need to address matters such as remote access, communications security and requiring additional controls in a comprehensive, as opposed to piecemeal, fashion.

225. Accordingly, we decline to direct any modifications to the CIP Reliability Standards at this time to address the NOPR concerns regarding communications security, remote access, and the NIST Risk Management Framework. Rather, we agree with NERC and a number of commenters that suggest a technical conference discussing these issues as an appropriate next step. Accordingly, the Commission directs its staff to convene a staff-led technical conference, within 180 days from the date of this Final Rule, to examine the technical issues identified in the NOPR concerning communications security, remote access, and the NIST Risk Management Framework. While staff should develop a detailed agenda, the conference should address such matters as the adequacy of current coverage in the CIP Standards with regard to the technical issues identified, risks, feasibility, alternative approaches, and a comprehensive approach to addressing defense-in-depth and grid vulnerabilities.

III. Information Collection Statement

226. The FERC–725B information collection requirements contained in this Final Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[256] OMB regulations require approval of certain information collection requirements imposed by agency rules.[257] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirement of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

NOPR

227. In the NOPR, the Commission estimated a total average annual paperwork cost burden for the change in requirements contained in the CIP version 5 Standards of approximately $56 million. The Commission based its paperwork burden estimate on the difference between the latest Commission-approved version of the CIP Reliability Standards, CIP version 4, and the estimated paperwork burden resulting from CIP version 5 because ''the Commission has already imposed the burden of implementing the CIP version 4 Standards'' and addressed the incremental burden costs from CIP version 3 to CIP version 4 in the analysis outlined in Order No. 761.[258]

228. In the NOPR, the Commission observed that the change in compliance tasks and paperwork burden between the CIP version 4 Standards and the CIP version 5 Standards varies among entities, depending upon the extent to which an entity was subject to compliance with CIP version 4. Therefore, the Commission delineated three groupings of registered entities for purposes of discussing and refining the burden estimate, and provided separate analysis for each group. To estimate the change in paperwork burden between the CIP version 4 Standards and the CIP version 5 Standards, the Commission identified paperwork-related tasks that all responsible entities will undertake, at least to some extent.[259]

229. In addition, the Commission provided an average annual cost burden for each of the three groups of entities. Referencing Bureau of Labor statistics for the estimated hourly rates and average benefits data, the Commission estimated a total average annual paperwork burden for the change in requirements of $56,112,000.

Comments

230. A number of commenters take issue with the Commission's choice to evaluate the paperwork burden imposed in this Final Rule on an incremental basis from the CIP version 4 Standards to the CIP version 5 Standards, rather than estimate the paperwork burden based on a transition from the CIP version 3 Standards. In addition, various commenters assert that the Commission underestimates the

[254] *Id.* P 117.

[255] NERC Comments at 55. *See also* Idaho Power at 9; NAGF at 9–10.

[256] 44 U.S.C. 3507(d) (2012).

[257] 5 CFR 1320.11 (2012).

[258] NOPR, 143 FERC ¶ 61,055 at P 119.

[259] Specifically, the Commission determined that responsible entities would be required to, at a minimum: (1) Create or modify documentation of processes used to identify and classify the cyber assets to be protected under the CIP Reliability Standards; (2) create or modify policy, process and compliance documentation; and (3) continue documentation of compliance data collection.

paperwork and cost burdens imposed by the CIP Version 5 Standards.

231. EEI argues that comparing CIP version 5 to CIP version 4 ''vastly understates the burden and biases any realistic evaluation,'' and ''strongly disagrees'' with this basic assumption of the estimated paperwork burden. EEI contends that a more realistic and practical analysis would compare CIP version 3 and CIP version 5, but admits that such a comparison would be problematic because the design of the two versions are so different. Therefore, EEI urges the Commission to evaluate the CIP version 5 Standards on their own merits.[260] According to MidAmerican, the Commission's comparison of the two versions, and identification of the burden on responsible entities based on the classes of facilities each group of entities owns, ''misses the mark'' and, therefore, the Commission grossly underestimated the burden to successfully implement the CIP version 5 Standards.[261] Similarly, NRECA is unclear why the Commission chose to assess the paperwork burden by comparing CIP version 4 and CIP version 5, noting the differences between the two versions and the fact that CIP version 4 will not be implemented. NRECA submits that an appropriate analysis of burden should be based on the full cost of implementing CIP version 5.[262]

232. Tampa states that the level of effort under the CIP version 5 Standards is considerably higher than described in the NOPR due to the volume of new entities and new facilities coming into scope. Tampa points out that entities newly subject to the CIP Reliability Standards ''will have a steep learning curve and will need to purchase and install automated workflow and document management systems, which will require time and funding.'' [263]

233. LADWP states that it expects the impacts of implementing and complying with the CIP version 5 Standards will be substantial, largely resulting from two changes: (1) The elimination of the current blanket exemption for non-routable protocols, and (2) the new requirements in CIP–005–5 that require the expanded use of electronic security perimeters.[264] LADWP estimates that it will make an initial investment of almost $33 million for equipment, materials, and labor. LADWP also estimates that it will spend $3 million annually for software licenses and staff to monitor and implement the CIP version 5 Standards.

Commission Determination

234. For the reasons discussed below, the Commission adopts the Information Collection Statement outlined in the Docket No. RM13–5–000 NOPR.

235. The Paperwork Reduction Act only applies to the paperwork burden imposed by a rule, it does not apply to the substantive requirements imposed by that rule.[265] Commenters generally argue that the Commission underestimates the economic burden of the CIP version 5. However, no commenter provides an analysis regarding the paperwork burden resulting from the approval of the CIP version 5 Standards, as opposed to the anticipated costs of full implementation. For example, NRECA states that its data suggests that the costs associated with the CIP version 5 Standards are an order of magnitude greater than the NOPR estimates. Likewise, LADWP provides a cost estimate for full implantation including equipment, materials and labor, but does not segregate out the paperwork burden relevant to the immediate analysis. Because the Paperwork Reduction Act requires that the Commission estimate the total average annual paperwork cost burden, not the total estimated cost burden of the rule, arguing that the cost of full compliance with CIP version higher than the estimated *paperwork burden* does not negate the Commission's Paperwork Reduction Act estimate.

236. With regard to MidAmerican's and Tampa's comments regarding the costs associated with the expanded scope of the CIP version 5 Standards, we recognize that the CIP version 5 Standards offer a more comprehensive protection of the bulk electric system, particularly due to the coverage of Low Impact assets. Statements regarding the expanded scope of the CIP Reliability Standards alone, without additional data, do not undermine the Commission's approach to estimating the paperwork burden associated with the CIP version 5 Standards or the resulting paperwork burden estimate. The Commission included the cost of developing and modifying the documentation for the required policies, plans, programs and procedures in the paperwork burden estimate, but did not include the cost of substantive compliance with the CIP Reliability Standards. Absent specific comments on the paperwork burden associated with the CIP version 5 Standards, the Commission has no basis to amend the NOPR estimate.

237. In addition, multiple commenters argue that the Commission erred by relying on a burden estimate based on a comparison of the CIP version 5 Standards to the CIP version 4 Standards since the CIP version 4 Standards will not take effect. We reiterate that, in considering and approving the CIP version 4 Standards, the Commission already compared and accounted for the incremental cost burden resulting from the change from the CIP version 3 Standards to the CIP version 4 Standards. Therefore, any incremental change in paperwork burden associated with the approval of the CIP version 5 Standards will be relative to the burden imposed by the approval of the CIP version 4 Standards, whether that change be positive or negative.[266]

238. In reply to concerns regarding potential cost increases associated with changes we direct in this Final Rule, we clarify that any differences in cost will be evaluated at such time as NERC files the directed changes with the Commission.[267]

239. After consideration of comments, the Commission adopts the NOPR proposal for the information collection burden and cost, summarized as follows:

Groups of registered entities	Classes of entity's facilities requiring CIP Version 5 protections	Number of entities	Total hours in year 1 (hours)	Total hours in year 2 (hours)	Total hours in year 3 (hours)
Group A	Low	61	0	3,804	3,804
Group B	Low	1,089	0	570,636	570,636

[260] EEI Comments at 24.

[261] MidAmerican Comments at 24–25.

[262] NRECA Comments at 11–12.

[263] Tampa Comments at 14–15.

[264] LADWP at 18.

[265] *See* 44 U.S.C. 3506(c)(1) (2012) (outlining the process for the evaluation of a collection of information under a proposed agency rule).

[266] As discussed in the NOPR, we accounted for the provision that CIP version 4 would not go into effect by adjusting the paperwork burden estimate for blackstart facilities—the *only* facilities captured by the CIP–002–4 bright line criteria for full protection, but no longer subject to such protections under the CIP version 5 Standards. *See* NOPR, 143 FERC ¶ 61,055 at PP 123–124.

[267] *See* Order No. 706, 122 FERC ¶ 61,040 at P 800.

Groups of registered entities	Classes of entity's facilities requiring CIP Version 5 protections	Number of entities	Total hours in year 1 (hours)	Total hours in year 2 (hours)	Total hours in year 3 (hours)
Group B	Medium	260	128,960	128,960	64,896
Group C	Low	325	0	170,300	170,300
Group C	Medium (New)	78	1,248	1,248	19,136
Group C	Low (Blackstart)	283	22,640	22,640	−206,024
Group C	Medium or High	325	265,200	265,200	135,200
Totals			418,048	1,162,788	757,948

240. The following shows the average annual cost burden for each group, based on the burden hours in the table above:

- Group A: 61 unique entities * 41.5 hrs/entity * $72/hour = $182,000
- Group B: 1,089 unique entities * 448 hrs/entity * $72/hour = $35,127,000
- Group C: 325 unique entities * 889 hrs/entity * $72/hour = $20,803,000

241. Total average annual paperwork cost for the change in requirements contained in the final rule in RM13–5 = $56,112,000. (i.e., $182,000 + $35,127,000 + $20,803,000).

242. The estimated hourly rate of $72 is the average loaded cost (wage plus benefits) of legal services ($128.00 per hour), technical employees ($58.86 per hour) and administrative support ($30.18 per hour), based on hourly rates and average benefits data from the Bureau of Labor Statistics.[268]

Title: Mandatory Reliability Standards, Critical Infrastructure Protection.

Action: Proposed Collection FERC–725B.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This final rule approves the requested modifications to Reliability Standards pertaining to critical infrastructure protection. The approved Reliability Standards help ensure the reliable operation of the Bulk-Power System by providing a cyber security framework for the identification and protection of Critical Assets and associated Critical Cyber Assets. As discussed above, the Commission approves NERC's proposed Version 5 CIP Standards pursuant to section 215(d)(2) of the FPA because they represent an improvement to the currently-approved CIP Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

243. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, phone: (202) 502–8663, fax: (202) 273–0873].

244. Comments on the requirements of this rule may be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM13–5–000 and OMB Control Number 1902–0248.

IV. Regulatory Flexibility Act Certification

245. The Regulatory Flexibility Act of 1980 (RFA)[269] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[270] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[271]

NOPR

246. In the NOPR, the Commission sought comment on the estimated economic impact of implementing and complying with the CIP version 5 Standards. The Commission specifically requested detailed and supported information to better estimate the potential cost burden that small businesses could face under the CIP version 5 Standards.

247. In the NOPR, the Commission estimated that the proposed CIP version 5 Standards, as filed, will impact 536 small entities.[272] The Commission based its estimate of the potential economic impact to small entities according to functional registration and the CIP–002–5 impact rating of assets an entity likely owns by function. Of the 536 total, the Commission estimated that only 14 small entities may, on average, experience a significant economic impact of $116,000 per entity in the first year, $145,000 in the second year, and $88,000 in the third year, for a total of $349,000 per entity over the first three years.[273] The Commission explained that the significant costs in early years are primarily due to initial implementation and, thereafter, the Commission expected the average annual cost per each of the 14 entities to be less than $64,000. The Commission determined that, as 2.6 percent of the affected small entities, these 14 entities do not represent a ''substantial number'' in terms of the total number of regulated small entities subject to the Final Rule.

248. In addition, the Commission estimated that 222 out of the 536 small entities[274] will each experience an average economic impact of $29,000 per

[268] *See http://bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm*.

[269] 5 U.S.C. 601–612.

[270] 13 CFR 121.101 (2012).

[271] 13 CFR 121.201, Sector 22, Utilities & n.1.

[272] *See* NOPR at P 132 & n.132.

[273] *See* NOPR, 143 FERC ¶ 61,055 at P 132 (explaining the calculation as based on an estimated 4,600 hours of total work per entity over three years at $59/hour and $15,000 of non-labor costs. (Math correction: $72/hour and $18,000)).

[274] *Id.* P 133. The NOPR explained this figure as the number of small entities that own assets covered by CIP version 5, and not including the 14 significantly impacted entities.

year during years two and three.[275] Finally, the Commission estimated that the remaining 300 out of the 536 small entities will only experience a minimal economic impact.[276] Therefore, the Commission proposed to certify that the proposed Reliability Standards will not have a significant economic impact on a substantial number of small entities, and, accordingly, stated that no initial RFA analysis is required.

Comments

249. Several commenters raise concerns with the Commission's RFA analysis and proposed certification. APPA states that a Final Rule adopting NERC's proposed CIP version 5 Standards as filed will have a ''significant economic impact'' on all small entities that are registered as transmission owners and transmission operators that own or operate transmission control centers.[277] APPA cautions that it will not condone any Commission RFA certification that denies a ''significant impact on a substantial number of small entities.'' [278] Further, APPA asserts that if the Commission disregards APPA's analysis and adopts the changes proposed in the NOPR, it must conduct a full RFA analysis.[279]

250. APPA contests a number of estimates in the NOPR. APPA states that 327 out of 2,000 not-for-profit publicly owned electric utilities in the United States are on the NERC compliance registry, and approximately 266 of these entities are designated as small entities under the relevant SBA definition.[280] In addition to the 14 small entity transmission owners estimated in the NOPR, APPA identifies 31 small public power transmission operators that it believes are likely to incur significant costs. APPA believes these entities should be added to the 14 identified by the Commission for a total of 45 entities facing a potential significant economic impact.[281] APPA states that the compliance cost burden for High and Medium Impact Control Centers will pose particular challenges to small public power entities in economically distressed areas of the United States. On the basis that one of its surveyed members ''budgeted $500,000 for developing its CIP compliance program,'' APPA advocates revising the NOPR estimate upward from $334,000 to $500,000 across the first three years for all 45 entities it believes should be designated as having significant costs.[282]

251. APPA also argues that the NOPR's estimated ongoing economic burden of $64,000 per year is not credible because it is ''clearly insufficient to operate and maintain cyber security controls for a bulk electric system-quality control center . . . and develop and implement an enterprise-wide cyber security program'' for Low Impact assets.[283] Based on a range of estimates derived from its survey, APPA arrived at a median annual ongoing cost of $200,000 to maintain security and an additional $50,000 per entity to maintain and carry out the programmatic controls for Low Impact facilities.[284]

252. APPA further identifies 35 discrete small transmission owners that sell less than 1 million megawatt hours a year, stating that ''[a]ny increase in compliance costs will be a significant burden to these entities relative to their revenue.'' [285] APPA states that compliance will force rate increases for these entities that could lead to the loss of key industrial and commercial customers. For each of these entities, and for the remaining entities without High or Medium Impact systems, APPA accepts the Commission estimate of $58,000 for years 1–3, but revises the ongoing cost burden to $50,000.[286]

253. APPA concludes that the total economic burden resulting from the CIP version 5 Standards on all small entities will be $56,349,000.[287] APPA requests that the Commission correct its RFA calculations in the Final Rule and provide more detail on how it arrived at the estimates in the RFA analysis. APPA explains that it requested, but that NERC declined to send out an information request to gather data from small entities on the standard's regulatory impact. APPA requests that, to the extent the Final Rule modifies the CIP version 5 Standards, the Commission direct NERC to provide detailed and supported information regarding the impacts on small entities.[288]

254. NRECA questions the Commission's RFA estimates and requests further explanation of specific assumptions in a manner that would facilitate further comment and analysis. NRECA states that it received estimates from several of its members and concludes that the CIP version 5 Standards, as filed, for entities with only Low Impact assets will cost approximately $100,000 for implementation and then $50,000 annually thereafter.[289] NRECA states that the Commission provides too little information to support its action of not performing a full regulatory flexibility act analysis.

255. PUCO states that compliance with the CIP version 5 Standards could place heavy financial burdens on smaller utilities, municipalities, and coops. PUCO states further that these entities may not have the same cost-benefit relationship as larger utilities, and that this cost difference should be accounted for in the proposed standards. In addition, PUCO states that investment must be made in a cost effective manner for each utility in a way that protects their high risk vulnerabilities.[290]

Commission Determination

256. Upon consideration of the NOPR comments, we revise our estimate of the number of potentially impacted small entities upwards, from 14 to 45, to reflect the 31 small transmission operators identified by APPA.[291] This number reflects 8.4 percent of the total 536 small entities subject to the CIP version 5 Standards. Further, for the purpose of RFA certification, we will also adopt APPA's cost estimates for the 31 entities added to our analysis, but will maintain our cost estimates for the 14 small entities discussed in the NOPR. Nonetheless, even assuming APPA's cost estimates are correct, we adopt the NOPR proposal and maintain that a full regulatory flexibility analysis is not required.

257. In the NOPR, the Commission estimated that 1.5 percent of the total 305 small entities registered as distribution providers would own underfrequency or undervoltage load shedding systems that were previously not subject to the CIP Reliability Standards, and that 10 percent of the 94 total small entities registered as transmission owners would own

[275] The NOPR explained this cost figure as based on an estimated 268 hours of total work per entity for each of years two and three combined at $72/hour, and $7,500 of non-labor costs for each of years two and three.

[276] The NOPR explained this number of small Distribution Providers as those assumed to not own assets covered by CIP version 5.

[277] APPA Comments at 23.

[278] *Id.* at 23.

[279] *Id.* at 30–31.

[280] *Id.* at 24.

[281] *Id.*

[282] *Id.* at 28.

[283] *Id.*

[284] *Id.*

[285] *Id.* at 27.

[286] *Id.* at 29.

[287] *Id.* at 28.

[288] *Id.* at 31.

[289] NRECA Comments at 13.

[290] PUCO Comments at 2–3.

[291] While we question whether available data supports APPA's proposed addition of the 31 small transmission operators discussed above, we will nevertheless adopt APPA's number for the sake of our analysis.

Medium Impact assets newly subject to CIP version 5, comprising a total of 14 potentially impacted small entities. The Commission considered the time and expertise needed for an entity to document its asset evaluation process, policy and compliance information, and policy implementation information, as well as install hardware and software, and collect data, to arrive at our estimate of 4,600 hours of total work per entity over three years at an averaged $72 per hour rate for a total $331,000 of labor costs and $18,000 of non-labor costs per entity.

258. In the NOPR, the Commission did not count the small transmission operators identified by APPA because the Commission's analysis assumed that entities had secured the control centers under the CIP version 3 Standards. As noted in Order No. 706, the Commission finds it ''difficult to envision a scenario in which a reliability coordinator, transmission operator or transmission owner control center or backup control center would not properly be identified as a critical asset.'' [292] We, therefore, accept APPA's request to include small entity transmission operators having control centers in our total of small entities significantly affected. We also adopt APPA's suggested figures for costs to secure small transmission operators with control centers, even though APPA provides no detail or support for this figure, as we requested, other than one of its members' planned budgeting for these amounts.

259. We reject APPA's position that 35 small entity transmission owners that sell less than 1 million megawatt hours per year should change our analysis. We understand APPA's argument to rest on the concept that the extra small size of these entities means that they experience the agreed upon compliance cost figure in a proportionately higher manner. Upon evaluating the EIA 2011 data concerning the total revenues for each of the 35 entities listed by APPA, we find that the highest single year cost of $29,000 approaches 0.6 percent of total revenues for only one entity, and is less than 0.3 percent for nearly all of these entities.[293] Viewed across the three-year implementation period, the yearly implementation cost as a percent of total revenues amounts to 0.1 percent when averaged across all 35 entities. Even if these expenses force such an organization into a rate increase, a base of only 2,000 ratepayers would distribute the increase at less than one dollar per month per customer for the three-year period including one year of on-going costs. For these reasons, APPA has not persuaded us that the 35 extra-small entities will experience proportionately significant costs in the view of the RFA.

260. While APPA asserts that a full RFA analysis is required, we note that we have incorporated relevant portions of APPA's estimates, yet remain unconvinced that the Final Rule will have a significant economic impact on a substantial number of small entities necessitating a more extensive RFA analysis. In addition, we reject the argument that the Commission must revise the NOPR RFA analysis to the extent that the Commission directs modifications to an approved Reliability Standard. We reiterate the Commission's determination in Order No. 706 that until NERC files a revised Reliability Standard, the Commission cannot estimate the burden on any user, owner or operator of the Build-Power System, including small entities, and, therefore, it is not appropriate to speculate on the cost of compliance with any directed modifications at this time.[294]

261. Finally, we reject APPA's request that the Commission direct NERC to provide detailed and supported information regarding the impacts on small entities resulting from any modifications to the CIP version 5 Standards directed in this Final Rule. To the extent that APPA has concerns regarding the cost resulting from a Commission directive, the proper place to raise that concern in the first instance is in the NERC standards development process. In addition, we note that the parties with the best information on the potential impact on small entities resulting from the CIP Reliability Standards are the small entities themselves, and we expect such entities to raise their concerns during the standards development process. To the extent that entities provide NERC with such information, we encourage NERC to submit the cost data along with the associated new or revised Reliability Standard requirements.

262. In summary, the Commission estimates that the CIP version 5 Standards will have an economic impact on 536 small entities. The Commission estimates that 14 small entities, registered as transmission owners or distribution providers, and owning a Medium Impact Assets, may experience a significant economic impact of, on average, $116,000 per entity in the first year, $145,000 in the second year, and $88,000 in the third year, for a total of $349,000 over the first three years. After the initial implementation the Commission expects the average annual cost per each of these 14 entities to be less than $64,000. For the sake of this analysis, the Commission expects an additional 31 small entities, registered as transmission operators and operating a Medium Impact control center, to experience a significant economic impact of $518,000 over the first three years and $250,000 ongoing costs per year thereafter. Because we expect the bulk of the initial expense to occur in years two and three, we divide by two to estimate the highest annual cost experienced at $259,000.

263. Together, these two classes of significantly impacted entities comprise 45, or 8.4 percent of the total 536 small entities. The Commission concludes that 8.4 percent of the affected small entities does not represent a substantial number in terms of the total number of regulated small entities, as defined by the RFA, that are subject to the Final Rule. The Commission estimates that 191 out of the 536 small entities will each experience an average economic impact of $29,000 per year during years two and three, and $13,000 annual ongoing costs thereafter. Finally, the Commission estimates that the remaining 300 out of the 536 small entities will only experience a minimal economic impact. In conclusion, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a full regulatory flexibility analysis is not required.

V. Environmental Analysis

264. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[295] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the

[292] Order No. 706, 122 FERC ¶ 61,040 at P 280.

[293] *See* Energy Information Administration Form 861 (*available at http://www.eia.gov/electricity/data/eia861/index.html*). The highest year cost of $29,000, as estimated in the NOPR, divided by the total revenue listed in EIA data for a given entity. With the maximum total revenue of $5,021,000, the calculation for Sabine River Authority of TX/LA (Toledo Bend Project) results in 0.58 percent.

[294] *See* Order No. 706, 122 FERC ¶ 61,040 at P 800.

[295] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

regulations being amended.[296] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

265. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

266. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

267. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

VII. Effective Date and Congressional Notification

268. This Final Rule is effective February 3, 2014.

269. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[297] The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following Appendix will not appear in the *Code of Federal Regulations.*

Appendix

Commenters

Abbreviation	Commenter
AEP	American Electric Power Service Corporation.
Alliant	Alliant Energy Corporate Services.
Alrich	Tom Alrich.
Ameren	Ameren Service Company.
APPA	American Public Power Association.
Arkansas	Arkansas Electric Cooperative.
BPA	Bonneville Power Administration.
CenterPoint	CenterPoint Energy Houston Electric, LLC.
Consumers Energy	Consumers Energy Company.
Dominion	Dominion Resources Services, Inc.
EEI	Edison Electric Institute.
Encari	Encari, L.L.C.
EPSA	Electric Power Supply Association.
Exelon	Exelon Corporation.
FirstEnergy	FirstEnergy Service Company.
G&T Cooperatives	Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, and Tri-State Generation and Transmission Association, Inc.
Gist	Thomas Gist.
GSOC	Georgia Systems Operations Corp.
Holland	City of Holland, Michigan.
Idaho Power	Idaho Power Company.
IRC	ISO/RTO Council.
ISO New England	ISO New England Inc.
ITC	ITC Companies.
KCP&L	Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.
LADWP	City of Los Angeles Department of Water and Power.
Luminant	Luminant Generation Company, LLC.
MidAmerican	MidAmerican Energy Holdings Co.
MISO	Midcontinent Independent System Operator, Inc.
NAGF	North American Generator Forum.
NARUC	National Association of Regulatory Utility Commissioners.
NASUCA	National Association of State Utility Consumer Advocates.
National Grid	National Grid USA.
NERC	North American Electric Reliability Corporation.
NextEra	NextEra Energy, Inc.
NIPSCO	Northern Indiana Public Service Co.
Northeast Utilities	Northeast Utilities Companies.
NorthWestern	NorthWestern Energy.
NRECA	National Rural Electric Cooperative Association.
NRG	NRG Companies.
OEVC	Occidental Energy Ventures Corp.
Pepco	Pepco Holdings, Inc.
PG&E	Pacific Gas and Electric Company.
Portland	Portland General Electric Company.
PPL Companies	Louisville Gas and Electric Company; Kentucky Utilities Corporation; Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC; PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Holtwood, LLC; PPL Ironwood, LLC; PPL Martins Creek, LLC; PPL Montana, LLC; PPL, Montour, LLC; and PPL Susquehanna, LLC.

[296] 18 CFR 380.4(a)(2)(ii).

[297] *See* 5 U.S.C. 804(2) (2007).

Abbreviation	Commenter
PUCO	Public Utilities Commission of Ohio.
Reclamation	Department of Interior Bureau of Reclamation.
SCE	Southern California Edison Company.
SCE&G	South Carolina Electric & Gas Company.
Southern Indiana	Southern Indiana Gas and Electric Company.
Smart Grid	Smart Grid Interoperability Panel Smart Grid Cybersecurity Committee.
SPP Parties	Kansas City Board of Public Utilities, Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Southwest Power Pool, Inc., Westar Energy, Inc., and Western Farmers Electric Cooperative.
SPP RE	Southwest Power Pool Regional Entity.
SWP	California Department of Water Resources State Water Project.
Tacoma	Tacoma Power.
Tampa	Tampa Electric Company.
TAPS	Transmission Access Policy Study Group.
TVA	Tennessee Valley Authority.
UI	United Illuminating Company.
Venafi	Venafi.
Waterfall	Waterfall Security Solutions, Ltd.
Wisconsin	Wisconsin Electric Power Company.
Xcel	Xcel Energy Services, Inc.

[FR Doc. 2013–28628 Filed 12–2–13; 8:45 am]

BILLING CODE 6717–01–P

Reader Aids

Federal Register

Vol. 78, No. 232

Tuesday, December 3, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, DECEMBER

71987–72532 2
72533–72788 3

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
930 ..... 9062, 9063

5 CFR

930 71987

9 CFR

Proposed Rules:
317 72597

10 CFR

430 72533

12 CFR

325 72534
712 72537
741 72537

14 CFR

39 ..... 71989, 71992, 71996, 71998, 72550, 72552, 72554, 72558, 72561, 72564, 72567, 72568
71 ..... 72001, 72002, 72003, 72004, 72005, 72006, 72007, 72008, 72009, 72010, 72011
460 72011

Proposed Rules:
39 72598
71 72056

15 CFR

301 72570
303 72570

16 CFR

Proposed Rules:
300 72057

17 CFR

39 72476
140 72476
190 72476

18 CFR

40 72756

20 CFR

404 72571

21 CFR

1308 72013

26 CFR

1 72394
300 72016
602 72394

Proposed Rules:
1 72451

29 CFR

4044 72018

32 CFR

158 72572

33 CFR

100 72019
117 ..... 72020, 72022, 72023
165 72025

34 CFR

Proposed Rules:
Ch. II 72600

36 CFR

7 72028

Proposed Rules:
7 72605

38 CFR

3 72573
17 72576

40 CFR

52 ..... 72032, 72033, 72036, 72040, 72579
62 72581
81 ..... 72036, 72040

Proposed Rules:
52 72608
62 ..... 72609, 72611
194 72612

42 CFR

413 72156
414 72156
431 72256

45 CFR

Proposed Rules:
144 72322
147 72322
153 72322
155 72322
156 72322

48 CFR

Proposed Rules:
44 72620
46 72620
52 72620

50 CFR

622 72583
635 72584
648 72585
660 72586

Proposed Rules:
17 ..... 72058, 72622

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 1848/P.L. 113–53

Small Airplane Revitalization Act of 2013 (Nov. 27, 2013; 127 Stat. 584)

H.R. 3204/P.L. 113–54

Drug Quality and Security Act (Nov. 27, 2013; 127 Stat. 587)

S. 252/P.L. 113–55

To reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity, and for other purposes. (Nov. 27, 2013; 127 Stat. 641)

Last List November 25, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.